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Report of the Rent Law Commission 1881 Vol-I

A = Govt. of Bengal

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THE REPORT

OF

THE RENT LAW COMMISSION,

WITH

THE DRAFT OF A BILL TO CONSOLIDATE AND AMEND THE LAW OF LANDLORD AND TENANT WITHIN THE TERRITORIES UNDER THE ADMINISTRATION OF THE LIEUTENANT-GOVERNOR OF BENGAL.

VOLUME I.

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No. 2236½—1822½ L R.

FROM

A. MACKENZIE, ESQ.,

Secretary to the Government of Bengal,

TO

THE SECRETARY TO THE BOARD OF REVENUE.

Dated DARJEELING, *the 15th July 1880.*

SIR,

I AM directed to forward, for the consideration of the Board of Revenue, a copy of the report of the Rent Law Commission, and accompanying papers, including a *Draft of a Bill to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.* Commissioners and District Officers have also been furnished with copies direct from this Office. I am to request that the Board will first invite the attention of those officers to the points in the Report and Bill which seem to the Board to call for particular consideration and discussion, and then, after digesting and analysing their replies, submit to Government a comprehensive review of the whole subject. This review should reach Government not later than the end of November.

2. The following are some of the questions raised by the Draft Bill which the Lieutenant-Governor would wish to have generally and carefully considered. He hopes that the Board will impress upon officers in the interior the importance of ascertaining the views of all classes of persons interested in land upon these and all other changes of moment suggested by the Commission :—

CHAPTER I.

3. The provisions of the Bill for defining more precisely the distinction between tenure-holders or under-tenure-holders and ryots are new, and call for detailed criticism. The Board are well aware of the difficulties surrounding this question, and of the manner in which it constantly comes up in settlements, especially in the eastern districts and the Sunderbuns. The Commission have discussed it very fully in paragraphs 16 to 23 and 36 of their Report; and in section 11 of the Bill have put forward an arbitrary rule for the determination of such status, based on the quantity of land included in a single holding or letting. This provision has to be read with those of sections 9, 10 and 12, laying down the limits of enhancement in the case of tenures and under-tenures. Its probable effect upon the position of persons holding what are now usually classed as large ryotty jotes, in districts like Rungpore and Noakholly, should be carefully analysed and tested by concrete examples.

4. The effect of the limitations placed in the Bill on the enhancement of the rent of tenures and under-tenures generally should also be fully investigated.

CHAPTERS III. AND IV.

5. A distinction is drawn in these Chapters between ryots who have held land for twelve years, and ryots who have held for three or more, but less than twelve years. The former are declared to have rights of occupancy, as under the existing law; their holdings, and theirs only, are subject to all the legal incidents of the occupancy tenure as defined in the Bill; their rents are regulated by the detailed rules of enhancement laid down in Chapter III; and to them only applies the elaborate enhancement procedure set forth in Chapter XV. The ryots of Chapter IV. are not deemed to have rights of occupancy, but

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they are evidently deemed to be something more than mere tenants-at-will. Their landlord may demand from them any rent he pleases; but if they are forced thereby to relinquish their lands, he must give them one year's enhanced rent as compensation for disturbance, besides the value of their improvements. On referring to Chapter XV., the Lieutenant-Governor finds that the scheme of enhancement devised by the Commission amounts practically, and in its essence, to a proposal to re-establish a system of authoritative local rent rates as the equivalent, in fact, of the old pergunnah rates, and to place the determination of these in the hands of the Revenue authorities. But if an authoritative local rates system is established in the manner proposed, the wording of the old Regulations would lead to the conclusion that it should apply generally to *all* non-privileged cultivators within the tract affected by it. Ryots who have held over three, but less than twelve, years are, in fact, settled cultivators who are fast developing into the statutory occupancy ryots. On their attaining the statutory tenure, their rents should equitably be regulated by the Collector's Table of Rates, and in any future enhancement proceedings they would be treated in the same way as other occupancy ryots. It certainly seems anomalous that they should be liable to pay higher rates meantime, and be able to claim compensation for what they choose to consider excessive demand—a right which is not allowed to the occupancy ryot himself. At present, as the Lieutenant-Governor gathers from the reports on Sir Richard Temple's enhancement proposals, the village rent rates for ordinary occupancy and non-occupancy ryots are the same in most districts; and the Collector's Table of Rates would probably be gladly accepted as a satisfactory settlement of the rates for all classes of resident cultivators. If so, it would certainly seem to be simpler to omit Chapter IV. of the Bill, and declare that the right of occupancy, involving the obligation of paying rent according to the Collector's Table of Rates, should attach to all ryots holding land for three years or more. It might be necessary to make exceptions to meet the case of cultivators of *chur* lands and the like; but the Lieutenant-Governor would wish to know what *practical* objections there are to the course now suggested. *Primâ facie* it would tend to simplify considerably the classification of the agricultural community, and the relations of landlords and tenants.

6. In section 19, explanation 3 (*a*), it is proposed to confer the right of occupancy on the sub-tenants of *makurraridars* and *istimrardars*. I am to ask if there is any good reason why this should not be done.

7. In clause (*c*) of the same explanation it is explicitly declared that the sub-tenant of an occupancy ryot, holding *otherwise* than for a term, or year by year, has himself a right of occupancy; and by clause (*c*) of section 23 the rent of the holder of such a sub-occupancy right is limited to a rate slightly higher than that of the occupancy ryot. This sub-occupancy right is said to be contemplated by the existing law, but the Lieutenant-Governor doubts whether such a tenure exists in practice. It would perhaps be simpler to treat the tenants of occupancy ryots as mere tenants-at-will, which is all that they usually are.

8. Under explanation 4, clause (*h*) of the same section a landlord is, under certain circumstances, allowed to prevent the acquisition of the occupancy right by exacting a written contract to that effect from an in-coming tenant. If it is desirable, on grounds of public policy, as the Lieutenant-Governor considers it is, to make the occupancy right general and valuable, it is a question how far contract should be allowed to interfere. The proposals of the Commission under this head should be carefully considered. They may perhaps be deemed to suggest a reasonable compromise between the two extreme views that may be held on this subject.

9. Section 20 sets out the legal incidents of the occupancy tenure. The propriety of making it transferable by private sale and gift is recognised by the Commission, and the Lieutenant-Governor believes, under the circumstances of Bengal, rightly recognised. Attention is invited to the limitations placed on the general right of transfer; the tenure is not to be saleable in execution of any decree other than a decree for its own arrears of rent, and it may not be mortgaged. The grounds of these restrictions are given in paragraph 32 of the Commission's Report. Their validity should be investigated, and their probable effect discussed.

10. By clause (*e*) ejectment for arrears is done away with, but ejectment is allowed for breach of *any* stipulation in respect of which the landlord and tenant may have contracted in writing that ejectment should be the penalty for breach thereof. This clause assumes that the ryot is in an independent condition when contracting. The Lieutenant-Governor shares the doubts as to the propriety of this provision, referred to in paragraph 34 of the Commission's Report.

11. The provisions of section 21, regarding rent in kind, should receive attention.

12. The substantive provisions of sections 22 and 23 regarding enhancement are very important, and should be carefully considered with reference to the remarks of the Commission in paragraphs 46 to 62 of their Report. The proposal to take one-fourth of the average annual value of the gross produce as the *maximum limit* or *ultimate test* of the equity of the occupancy ryot's rent will probably meet with general acceptance. The Commission do not, it will be seen, propose to take a share of the gross produce as the ordinary *standard* of rent, but leave enhancement to be made upon the grounds recognised by the present law as now more clearly defined and explained.

Chapter VI.

13. The provisions of this Chapter, bearing on the use of land for building purposes, are novel, and will no doubt meet with adequate criticism (see paragraphs 108 to 113 of the Commission's Report). It will probably be deemed desirable to settle this question once for all. The question of what percentage on the market value is a fair rent for building land should be carefully looked into. Possibly it should be settled from time to time, for each district or part of a district, by the Collector's Table of Rates, if it is decided eventually to have this prepared authoritatively for particular tracts, irrespective of individual applications for enhancement.

Chapter VII.

14. The provisions of the Chapter on Merger are explained in paragraphs 114 and 115 of the Report. They are designed to remove difficulties that not unfrequently crop up under the system of sub-infeudation so common in Bengal.

Chapter VIII.

15. The Board will doubtless give due consideration to the sections bearing on the registration of the transfers of tenures, under-tenures and occupancy holdings (paragraphs 116 to 121 of the Report).

Chapter IX.

16. Much of the matter of this Chapter has been already discussed very fully, and practically settled. The sections calling specially for criticism are those relating to the deposit of rent, the apportionment of rent, and the hypothecation of all tenures and holdings for the rent thereof (paragraphs 125 to 133 of the Report).

Chapter X.

17. The Chapter on co-parceners is explained in paragraphs 134 to 137 of the Report, and should receive careful attention.

Chapter XI.

18. The sections in this Chapter, which most call for notice, are perhaps section 77 regarding tenants' improvements and the ryots' right to trees, and section 80 providing for the disposal of the crop on the ground in cases of ejectment. The effect of these sections upon existing local customs should be investigated. Clause (9) of section 79, read with No. 16 of the third Schedule attached to the Bill, compels an auction-purchaser to elect to avoid subordinate tenancies within one year of his purchase. This seems to be a useful provi-

Chapter XII.

19. This is a special Chapter for Behar. The Lieutenant-Governor trusts that it will be carefully studied by all officers in that Province with reference to paragraphs 146 to 156 of the Report. It might also be usefully considered by Bengal officers whether some of the sections, such, for instance, as 84 and 85, might not be made general in their application.

Chapter XV.

20. This Chapter provides an elaborate procedure for enhancing the rents of occupancy ryots and tenure-holders. Its provisions are explained at legth in paragraphs 63 to 97 of the Report. The Lieutenant-Governor, as at present advised, is very much disposed to concur in the view taken by Mr. Dampier in his remarks appended to the Bill. It might even be sufficient to provide that the Revenue authorities, or specially selected officers working in conjunction with the district officers, should from time to time settle authoritative tables of rates for all districts or parts of districts, the rest being left to the civil courts, except, perhaps, in the cases described in section 112, *et seq.* The Lieutenant-Governor will not, however, attempt to prejudge the question, but desires that the fullest criticism may be applied to this portion of the Bill, and that the Board will submit eventually their matured conclusions as to accepting or modifying the proposals of the Commission.

Chapter XVIII.

21. In this Chapter is set forth the procedure devised by the Commission for the trial of ordinary rent-suits. They are of opinion that it is impossible to go further in the direction of summary trial without risk of injustice to one or other of the parties concerned; and certainly all the modes of summary procedure hitherto suggested have been open to grave objections upon that score. Judicial officers are in the best position to judge of the value of the procedure now suggested, and the Lieutenant-Governor hopes to receive a full expression of their views, and of those of the Hon'ble Judges of the High Court, on this Chapter. It will be well, however, that the Revenue authorities should also examine this part of the Bill, and make any remarks that occur to them in connection with it, after studying the detailed explanations of its tenor, contained in paragraphs 174 to 189 of the Commission's Report.

22. The schedule of limitation is explained in paragraphs 159 to 162 of the Report, and should not be overlooked.

No. 2286½—1322½ L. R., dated Darjeeling, the 15th July 1880.

From—A. Mackenzie, Esq., *Secretary to the Government of Bengal,*
To—*The Registrar of the High Court, Calcutta.*

I am directed to forward, for the use of the Court, 12 copies of the Report of the Rent Law Commission, and of the connected papers, and to say that the Lieutenant-Governor would be glad if the Hon'ble Judges would, in consideration of the great importance of the subject, not only consent to favour the Government with their own views upon the whole subject, but permit the reports of subordinate judicial officers to be forwarded through the Court, and submitted to its criticism.

2. Copies of the Report and papers have been sent from this Office direct to all District Judges, and the papers have also been published in the Gazette, so that all judicial officers are in a position to consider the matter, if the Court were willing to order them to report thereon to it instead of to Government.

3. I am to forward, for the information of the Hon'ble Judges, a copy of a letter addressed to the Board of Revenue, showing the points upon which the Lieutenant-Governor specially desires to learn the views of district and divisional officers, and of the Board.

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THE REPORT

OF

THE RENT LAW COMMISSION.

WE, the Commissioners appointed to consider the question of amending the Rent Law of the Lower Provinces of Bengal, have the honor to make the following Report:—

Twofold instruction given to the Commission

§ 1. By the orders of the Government conveyed to us on our appointment we were instructed (1) to prepare a careful Analysis and Digest of the existing Rent Law, as contained in the Acts and Regulations concerned with this subject and in the decisions of the Courts since the passing of Act X. of 1859; and (2), after considering the suggestions for amendment that have been put forward of late years, to endeavour to prepare a Draft Bill embodying such additions to the substantive law, and such improvements in the law of Procedure, as might be found advisable.

Digest submitted in August last.

§ 2. The Digest was first compiled by our colleague, Mr. Field, and was submitted on the 19th August last with our Secretary's letter No. 14 of that date.

Scope of the Draft Bill.

§ 3. The Draft Bill has now been prepared and is submitted with this Report. In the Digest was collected the whole of the Statute law and the Case law connected with the subject of Landlord and Tenant in the Lower Provinces of Bengal, that is, the whole of the law in its existing state. In making this compilation it was thought desirable to take in as wide a field as possible, and to include everything concerned less or more with the subject in hand. Any question as to whether a particular fragment of the law should find a place in the work was decided in favour of admissibility, if only its relevancy were at all apparent. Scantiness of materials might have involved the oversight of something of importance, while from a superabundance it was easy to select all that might well be incorporated in a consolidating enactment. This branch of the law, like many others, is more or less connected with some of the remaining branches, and it is not always easy to decide where the exact line of demarcation should be placed. In settling this question for the purposes of the Draft Bill, it seemed to us advisable to omit all matter contained in *special* or *local* enactments, not because any such matter contained in the Digest has not a sufficiently clear connection with the Law of Landlord and Tenant, but because it appeared to us to have a still more intimate connection with the context in which it is at present to be found. In accordance with this view the following portions of law, though included in the Digest, are omitted from the Draft Bill:—

Portions of law omitted from the Draft Bill though contained in the Digest

I.—The special procedure for the realization of rents in estates under the management of the Court of Wards or of the Revenue Authorities:

II.—The special procedure for the realization of rents in estates belonging to Government.

III.—The law concerned with Ghatwals and Ghatwali and other service tenures.

IV.—The details of the law relating to the avoidance of tenancies by a Sale for Arrears of Government Revenue.

V.—The effect of a Partition of a revenue-paying estate upon tenancies therein.

The law as to the resumption and assessment of *lakhiraj* lands by proprietors (see Articles 75 and 83 of the Digest) has also been omitted, as this subject has now ceased to have any special connection with the Law of Landlord and Tenant, and suits brought to resume and assess lands alleged to be held under invalid grants fall within the category of civil suits (see Act VII. (B.C.) of 1862).

With these exceptions, and one more important exception about to be noticed, the Draft Bill contains the law embodied in the Digest with those amendments and alterations which we[1] feel justified in recommending after such consideration and deliberation as the importance of the whole subject demands.

Proposed abolition of Distraint.

§ 4. The Bill does not reproduce the provisions of the existing law upon the subject of Distraint, and we propose to abolish altogether this mode of proceeding for the recovery of rent. This offset of English law was originally introduced into this country by Regulation XVII. of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law until 1859, when the power of distraint was limited to the produce of the land on account of which the rent is due. There can be little doubt that this change considerably impaired the coercive efficacy of this procedure as a means of recovering rent; and we are afraid that the provisions of the present law are not always strictly attended to. There is evidence of positive abuse of these provisions in Behar; and the experience of some of us is that they have not always been used in a regular manner in other parts of the country. We have had before us certain suggestions for shortening and improving this procedure, and have considered whether by their adoption it might not be made safely efficacious to a greater extent than it hitherto has been; but a majority of us finally came to the conclusion that it might well be omitted from any consolidating and amending Act. It is to be observed that this conclusion is in accordance with the greater number of the votes of the members of the Behar Rent Committee and of the Behar Indigo Planters' Association.

Powers of Settlement Officers excluded from the operation of the Bill

Merger in the case of Government

§ 5. Neither the Digest nor the Bill incorporates the law relating to the powers and duties of Settlement Officers. This subject has very recently occupied the attention of the Bengal Legislative Council, and has been dealt with by Act VIII. (B C.) of 1879, which received the assent of the Governor General on the 22nd May last year. It has appeared to us that any re-opening of this portion of the law on the present occasion would but needlessly complicate a subject already sufficiently intricate In connection with this topic we may, however, refer to a question which has occasionally created difficulties of a peculiar nature, and which we have attempted to solve by a section of the Draft Bill. The difference between *Revenue* and *Rent*, which was not always present with sufficient clearness to the minds of those charged with the earlier administration of these Provinces, has of late years been very distinctly realized by most persons concerned with the subject. This difference, though discernible in the abstract, is not, however, equally manifest in the particular instance, when we come to cases in which the paramount title belonging to the State and carrying with it the right to receive the *revenue*, and the proprietary title carrying with it the right to receive the *rent* have met in the person of Government. Do the two titles continue to co-exist, each preserving its own incidents? Or is one, and, if so, which of them, swallowed up and lost in the superior essence of the other? In other words, do the tenants, after that the two titles have come into the hands of Government, pay *rent* or *revenue*? The settlement of the question is important, not merely as regards the mode of recovering arrears, but as regards other important interests. We have provided in Section 45 that it is, and always has been, the law, that, when the Secretary of State for India acquires an estate by purchase or otherwise, the proprietary interest is merged in the paramount title. We have endeavoured to guard this provision so as to prevent injury to the rights and interests of third parties; and we have saved the operation of Act VIII. (B.C.) of 1879, which defines and limits the powers of Settlement Officers, and also the operation of the Public Demands' Recovery Act

The Bill does not in any way depend upon the existence of Patwáris

§ 6. The revival of the office of Patwari has recently engaged the attention of Government, and there are different views as to the advisability and probable utility of rehabilitating these remains of a former system, which the working

[1] The plural of the pronoun of the first person—"we"—is used throughout this *Report* to express the unanimous opinion of the Members of the Commission, or, where the questions are unimportant, the opinion of the majority Where the questions are important and the Members are not unanimous, the opinion adopted is expressly stated to be that of the majority Some Members have appended to the *Report* an expression of their views on particular points

of our administration has effectually subverted. After full consideration it has been lately decided by Government that zemindars shall no longer be required to keep up *Patwaris* in Bengal and Orissa. As to Behar, the question is still undetermined. We do not consider that it falls within the sphere of our present duty to discuss or express any opinion on this question; but it will be well to say that no portion of the Draft Bill depends upon the revival or maintenance of *Patwaris*. We may observe that the Behar Rent Committee do not deem it desirable to incorporate the law relating to *Patwaris* with the Rent Law.

Suggestions not adopted in the Bill.

§ 7. It will be convenient to notice here certain suggestions which have received our attentive consideration, but the matter of which finds no place in the Draft Bill, inasmuch as the result of our deliberations has been not to recommend their adoption. The first, and probably the most important, of these is that all contracts of tenancy should be required by law to be in writing. This is a suggestion which has been repeatedly made, and on more than one occasion supported by high authority. The majority of the tenancies in Bengal and Behar depend upon custom rather than contract. However suitable a law requiring contracts of tenancy to be made in a particular form may be for a community in which the idea of contract, being early developed, rapidly permeated all classes, we think that it is not equally suited for a community over which custom exercises a powerful influence, whilst more admiration is accorded to the ingenuity with which a contract is broken than to the honesty which respects its binding force. The Legislature of 1793 directed its efforts to the introduction of written engagements between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements; but neither party was in the least persuaded or converted: and finally, a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other. The little use made of the provisions of the existing law, which enable the ryot to sue for a pottah or the landlord for a kabuliyat, goes far to show that the race of landlords and tenants in Bengal has not much altered its mind on this point since the time of the Permanent Settlement. The experience of the Registration Offices indicates that writing is commonly used in the creation of *new* tenancies, and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes, than to force upon the people a law fashioned according to Western rather than Eastern ideas.

Suggestion that contracts of tenancy should be in writing.

Omission of the law as to pottahs and kabuliyats and suits for obtaining them.

§ 8. Closely connected with this point is the omission from the Draft Bill of any provisions similar to those of the existing law as to ryots being entitled to pottahs, and landlords being entitled to kabuliyats, and the procedure for enforcing the rights so declared. We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto—the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the ryot holds twenty bighas of land, while the ryot declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the ryot, afraid of a venal *Amin* and a varying pole, desires to avoid. A bribe to the *gomashtah* or compliance with some petty cess defers the final settlement of the question for a year; and the following year it arises again, perhaps deterring the ryot from going to his landlord's *kachahri* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or some fields in the ryot's holding are by him maintained to be second class rice land and assessble with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice land and should pay a higher rent. At every rent day the point is discussed; and in a country where any discussion is prone to beget a wrangle, seldom conducted with a seemly choice of expressions, an amount of irritation is kept up which is not in harmony with the

friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these which are constantly arising in this country, more especially in consequence of the absence of boundaries and fences and the want of an exact survey upon an uniform standard. It might have been thought that the landlord in the first case could easily have the question settled by tendering a pottah and demanding a kabuliyat for twenty bighas; and the landlord in the second case, by tendering a pottah and demanding a kabuliyat for the field, as first class rice land: but if the land turned out to be nineteen and a half bighas instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail, and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation. Thus, these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience. Section 151 of the Draft Bill accordingly allows either landlord or tenant to sue for the determination of any such questions which may arise between them. A copy of the decree passed in the case will have all the effect of a pottah or kabuliyat upon the point which the parties themselves wish to have determined.

Inadvisable to create fresh penalties for the levy of illegal

§ 9. We do not think it desirable that any further attempt be made to suppress the levy of illegal cesses by fresh measures of punitive legislation. The Draft Bill reproduces the provisions of the existing law, which enable a tenant, from whom any sum of money is exacted by his landlord in excess of the rent lawfully payable, to recover the sum so exacted, together with damages not exceeding double such sum. This, of course, in no way interferes with a resort to the criminal courts, if the exaction has been accompanied by any circumstances which constitute an offence under the Penal Code. The ryots, as a body, are daily becoming better acquainted with their rights. The creation of sub-divisions and the opening of criminal courts in the interior of districts are calculated to prevent oppression by rendering the means of redress more easy and certain. We believe that the operation of these principles of improvement will in time reduce this particular offence to the ordinary level of normal malefaction, and that this result would in no way be accelerated by the addition of fresh penalties to those which are to be found in the existing law.

"Estate", "Proprietor"

§ 10. Turning now to the Draft Bill, it will be convenient to follow its arrangement, to a certain extent, in discussing the alterations and amendments which we propose to make in the law. This arrangement will be sufficiently understood from the *Table of Contents* prefixed to the Bill: we shall only observe here that the Substantive Law has been placed in Part I. and the Adjective Law or Procedure in Part II. And, first, we have endeavoured to define the terms "estate", "proprietor", "tenure", and "under-tenure", so as to create distinct ideas of what is really meant, and avoid the confusion which has arisen from using these terms indiscriminately to signify the same and different things.[2] We have defined "estate" to mean land included under one entry in any of the General Registers of revenue-paying and revenue-free lands. It thus means the interest immediately below the paramount interest which Government has in the land. The owner of an estate is termed a "proprietor". The interest next below an estate and superior to that of a ryot we have defined to be a "tenure", and the owner of a tenure to be a "tenure-holder". Under a tenure and above the ryot's interest comes an "under-tenure", the owner of which is an "under-tenure-holder". If there are more than one of such middle interests, they are termed under-tenures of the first, second, &c., degree. We thus get down to the ryot whom we have defined to be "a person who holds land, or occupies and cultivates land, if such person was originally let into possession of such land for the purpose of cultivating it or bringing it into cultivation"; adding that "a person cultivates land or brings land under cultivation within the meaning of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers,

"Ryot."

[2] In some of the Acts of the Bengal Council the terms "tenure" and "under-tenure" are used indiscriminately for the same thing. One Act speaks of "patni taluks and *other* saleable under-tenures". Now, a *patni* is not an under-tenure, but a tenure, and is so spoken of throughout Regulation VIII. of 1819.

or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons". We shall presently have more to say about the ryot, when we come to consider some cases in which there is some difficulty in saying whether a certain class of persons ought to be regarded as ryots or tenure-holders (or under-tenure-holders). The ryot's interest is his "holding" and, where he has a right of occupancy, an "occupancy holding". "Holding." "Occupancy holding"

§ 11. The definition of "rent" presented some difficulty, as opinions differ about what rent really is in India. We have endeavoured to express what we hope will be accepted as a reasonable view of the subject, and have defined *rent* to be "whatever is payable or deliverable by a tenure-holder, under-tenure-holder, or occupancy ryot to the proprietor, tenure-holder, or under-tenure-holder possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land, or for any rights of pasturage, forest rights, fisheries, or the like". The full force of this definition will be more clearly understood after reading our subsequent discussion of the theory of rent which we conceive to be applicable to this country. The only other definition which requires particular notice is that of "land". Certain portions of Acts X. of 1859 and VIII. (B.C.) of 1869 have been construed to apply only to land used for agricultural or horticultural purposes, or the like. Whether the remaining portions are limited in their application is a broad question, which has never been settled, while some have contended that the provisions of these Acts as to the recovery of arrears of rent apply to the rent of any land, irrespective of the purpose for which it is used. It has never been doubted that the rents of tenures and under-tenures are recoverable under these Acts, and these commonly include much more than land used for agricultural or horticultural purposes. We have endeavoured by our definition to make this question clear for the future; and, according to this definition, the provisions of the Bill will be applicable to land used for all such purposes as are usual in this country. We have defined *bastu*, or homestead land, to be land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding. With respect to *bastu* land occupied by non-agriculturists, we have considered certain suggestions as to the hardship of persons who have occupied such land for very many years being liable to arbitrary ejectment, and we have provided generally for land used for building purposes in Chapter VI. the provisions of which we shall notice in order. "Rent" "Land" "Bastu Land."

§ 12. We have provided that nothing in the Bill shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. The mode of proving custom is not very well understood in this country, and unfortunately, notwithstanding a *dictum* of Sir Barnes Peacock to the contrary, an idea got to prevail that Act X. had superseded all customs and was intended to do away with all agricultural rights, except those specially mentioned and provided for in that Act. We believe that there are many local customs, in this as well as in every other country, well understood by the people, recognized by the landlords, and susceptible of proof in the courts of justice; and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions. Saving of Custom and Customary rights.

§ 13. It will be convenient to consider here a question to which we have referred above, namely, the difficulty of saying with regard to certain classes of the agricultural community whether they should be placed in the category of ryots, or in that of tenure-holders or under-tenure-holders. We think that the usual conception of a "ryot" is that he is the cultivator of the soil. If holdings had all been of such a size that they could be cultivated by a single average family, and if the practice of sub-letting had never come into existence, the ryot would in all probability still be the cultivator of the soil in every case. But the practice of sub-letting has become very common. Even where the holding is of such a size that an average family can cultivate it, it is not uncommon for the holder to take to some other employment than agriculture and to sub-let his paternal fields. Then there are in many districts *farms*, as we may term them in the English sense of the word, lots of land, too large for cultivation by any ordinary family in a country where cultivation is not conducted by capitalists, Question as to whether certain classes of agriculturists should be regarded as Ryots or Tenure-holders

largely employing hired labourers and agricultural machinery. The size of these lots forbids the presumption that the original lessees contemplated cultivating them either with their own hands or through the members of their families, or by hired labour; and all that we know of their history tends to negative the existence of any such intention. It will be important to describe the position of persons of this class in a few districts.

The Jotedars of Rungpore.

§ 14. As to Rungpore, we take the following passage from a letter of Mr. Glazier, the Collector, written in 1876:—"The ryot who holds direct from the zemindar is called a *jotedar*, and his holding is a *jote*, whatever its size, which may and does vary from one paying a rent of one rupee to one of which the rent is half a lakh. The large majority of *jotedars* have small holdings and are ryots proper, cultivating their lands either by their own or hired labour, or on the system of *adhiyari* or halvers. But a large number of *jotedars* have ryots under them who are called either *chukanidars* or *kurpa prajas*. The *chukanidars*, too, have often ryots under them, and in some cases, especially in the larger *jotes*, there are four or more degrees before you get to the actual cultivator. *Jotes* are saleable quite irrespective of the term during which they have been held, whether *jotes* held direct from the zemindar, or *chukani jotes* which are held from a *jotedar*. If a man gets a *jote* to-day he can legally transfer it by sale to-morrow. Such sales of *jotes* by registered deed or on decree of court are of daily occurrence." There is a strong resemblance between the interests in land in Rungpore and those found in the Bhootan Dooars. Mr. Glazier says that when the *jotedar* pays Rs. 100 he collects Rs. 200 from the actual cultivators.

The Howladars, &c., of Backergunge

§ 15. In Backergunge there are as many as thirteen persons having successive interest in the land inferior to that of the proprietor or zemindar. These interests are—(1) taluk, (2) zimba taluk, (3) shamilat taluk, (4) ashat taluk, (5) nim ashat taluk[1], (6) howla, (7) ashat howla, (8) nim ashat howla, (9) nim howla, (10) ashat nim howla, (11) mirass karsha, (12) kaim karsha, (13) karshadar or ryot. The origin of most of the taluks and howlas appears to have been a grant of a considerable tract of waste land upon favourable terms as to rent to some one who undertook to bring it under cultivation. The grantee reclaimed portions and sub-let portions to smaller reclaiming tenants; or perhaps sub-let the whole if he could find tenants to reclaim it. These sub-lessees sub-let again; and the sub-letting was carried still lower, until the whole tract was divided into holdings of a manageable size for single families. The number of grades doubtless varied with the size of the tract originally leased, and with the denseness of the population in the particular locality. Not uncommonly those who had reclaimed land sub-let it when the demand for land increased; or a person who had taken enough for two or three holdings reclaimed and retained enough for one and sub-let the remainder. It is easy to imagine the intricacy of interests which must have been the result of such a system. Sometimes the zemindar's grantee embarked a little capital, making advances to needy ryots forced out by the pressure of population from densely inhabited localities, and thus enabling them to buy ploughs and cattle and seed, and build homesteads. This was probably necessary at starting a new settlement. As matters progressed, and if the venture was successful, new settlers had to pay a *salami* or fine to the grantee before he assigned them lots in his grant. In many instances the chief capital taken to the work of reclamation was the labour of those who accompanied the grantee as a leader in whom they had confidence. Where the waste has been wholly reclaimed and the land fully occupied we find persons occupying the double position of landlord and tenant, paying rent for an entire lot, cultivating part, and sub-letting part to persons who perhaps again repeat the process. In the case of persons called "talukdars" no difficulty appears to have arisen, the word "taluk" carrying with it a definite kind of meaning, and being found as well in the old Regulations as in Act X. of 1859. With the *howladars*, however, the state of the case is not so clear. Are they talukdars? Do they hold an under-tenure in the vague sense in which the word has hitherto been used? If so, what is its nature, and what are its incidents? Are they ryots entitled to acquire a right of occupancy; and, if so, what becomes of the

[1] In certain settlement proceedings of Noakholly it is said that *ashat talukdars* and *nim ashat talukdars* are tenants of the same kind with *howladars* and *nim howladars*.

middlemen below them and the actual cultivator of the soil at the bottom? Act X. supplies no answer to these questions, and the courts have not yet settled them. The *howla* interest has come by custom to be regarded as heritable, transferable, and permanent so long as the rent is paid, but subject to enhancement. The Government in settling some of its own estates has treated the *howladars* as the occupancy ryots, and has declared that they are at liberty to make their own arrangements with the persons holding under them without interference on the part of the Settlement Officers.

The Aymadars of Midnapore.

§ 16. Persons in an apparently similar position are to be found in other districts under various appellations, such as *jangalburi ryots*, *mandals*, *aymadars*. The origin of all is probably similar, though the exact rights accorded to each by custom may vary in different districts. In Midnapore the Settlement Officer, Mr. Price, found certain *aymadars* who were receiving from ryots subordinate to them rents one hundred per cent. higher than those which they were paying to Government. Some of these *aymadars* who would not agree to the terms offered them by the Settlement Officer were put aside, and the settlement was made with the tenants immediately below them. Litigation ensued, and these *aymadars* were declared by the civil court to be ryots having a right of occupancy. It would appear, however, that though the subordinate tenants were parties to this case, it was substantially decided between the Government and the *aymadars*. It would have been more satisfactory if these tenants had taken an active part in the pleadings, and in consequence their position had also been fully considered in determining the rights of the *aymadars*.

The Mandals of Midnapore.

§ 17. In parts of Midnapore bordering on the Jangal Mahals there is a class of persons termed mandals who came into existence in the following manner: The zemindar granted a tract of waste land to a substantial ryot, termed an *abadkar*, who undertook to bring it under cultivation, paying the zemindar a stipulated lump sum as rent. This *abadkar*, partly by the labour of his own family and dependents, and partly by inducing other ryots to settle under him, gradually reclaimed the greater part of the grant and established a village upon it, to which he usually gave his name, and, as the head of the settlement, he was called mandal or headman. The *zemindar* and the *mandal* from time to time re-adjusted the terms of their bargain, but the *zemindar* never interfered between the *mandal* and his under-tenants. In settlement proceedings of 1839 these *mandals* were declared to have only the rights of *sthani* or *khudkasht* ryots, and not to be entitled to any *munafa* or profit; but though not exactly recognized as *talukdars*, they gradually acquired rights superior to those of ordinary *khudkasht* ryots; and as they were left to make their own terms with the ryots settled by them, they must have had a very considerable profit besides what they obtained from any land cultivated by themselves. Their *mandali* right became transferable by custom; and, when at settlement they came into immediate contact with Government, though not recognized as regular *talukdars*, they were held entitled to the consideration which in Bengal has usually been accorded to the first reclaimer of the virgin soil. The Government in settlement proceedings deducted fifteen per centum from the gross *jama* in their favour, and, after some demur, they accepted this as a sufficient recognition of their *status*.

See No. 507 A from Secretary to Board of Revenue, to Secretary to Government of Bengal, dated 8th June 1877.

Difference between persons who obtained reclaiming leases in estates permanently settled in 1793, and similar lessees in other estates.

§ 18. In considering the position of persons of the class described in the preceding paragraphs, it is important to point out that there are important differences between persons who obtained reclaiming leases in estates permanently settled in 1793, and persons who have since that time obtained similar leases in estates either permanently settled under more modern rules, or still the subject of temporary settlements. The settlement of 1793 was based on the assessment of the land then in cultivation, and the possible receipts from land then waste, but which might afterwards be brought under cultivation, were not taken into account. Indeed, the reclamation of this waste land, which in 1793 was computed to form one-third, or (according to others) one-half, or even more of the whole area of Bengal, was expressly pointed out to the zemindars as a source of future increase of income. The waste land being thus, as it were, held free of revenue by the zemindars—seeing that the amount of revenue payable by them depended upon the *then* cultivated lands and would be in no way affected by the waste being cultivated or not cultivated—they naturally did not take much

account of Government revenue in granting reclaiming leases. All the rent that they obtained by such grants was clear gain, subject to no deductions. Naturally they could afford to give, and they did give, such leases at very favourable rates—rates which left a large and increasing profit to their immediate lessees. The Government subsequently became fully alive to the importance of taking the waste land into account before any estate was permanently settled, and finally it was laid down as a general rule that no estate should be permanently settled in which the actual cultivation amounted to less than eighty per centum of the culturable area. At the same time Government took into its own hands large tracts of waste land not included within the limits of the permanently settled estates of 1793, and the grant of reclaiming leases in these tracts was regulated by a reasonable regard to the interests of the State, the incidence of the Government revenue being carefully taken into account. When estates not included in the Permanent Settlement of 1793 are now settled, the Government usually takes as revenue seventy per cent. of the gross collections. Allowing ten per centum as collection expenses, there remains twenty per cent. to be divided between the zemindar and the reclaiming lease-holder. In the permanently settled estate of 1793 there is ninety per cent. of the profits to be divided: or even if the Government revenue be distributed over the entire area of the estate, it comes to as little as ten per cent. in many places, thus leaving eighty per cent. to be divided.

Effect of the Case-law upon the status of this class

§ 19. Turning to the case-law we find it decided (1) that if a person takes land and at once sub-lets it he will be a middleman and will not under the present law acquire a right of occupancy in such land; (2) that if a ryot, who has acquired a right of occupancy in land sub-lets such land, he does not by so doing forfeit his right of occupancy; but (3) he cannot by so doing alter the nature of his holding and convert it into an under-tenure. Applying these principles, it will appear that the reclaiming lease-holder, who never himself cultivated and who sub-let before he had held for twelve years, never was a ryot with a right of occupancy. He was and is a middleman; but what are the rights of a middleman is not laid down in the law and must be very uncertain. If such lease-holder reclaimed and cultivated part of his lot and let the rest of it, are his position and his rights different in respect of the two portions? Can he be a ryot with a right of occupancy as to the former portion—unable to put off this character and convert himself into anything else but a ryot—and as to the latter portion, a middleman with undefined rights and liabilities? This uncertain and inconsistent state of the law—built up of isolated cases dealing with individual rights, which were the complement of the rights of other persons not before the court and not therefore duly considered—has led to much profitless litigation, and if allowed to continue must lead to still less satisfactory results. We think it therefore very expedient that the rights of the above classes of persons should be defined, and that some rules should be laid down which will enable the courts to say in all cases who are tenure-holders or under-tenure-holders, and who are ryots having a right of occupancy.

No clear line of distinction in the present law between Ryoti Holdings and Tenures or Under-tenures.

§ 20. After the fullest consideration of the whole subject it appears to us impossible to discover any principle of distinction between ryots and tenure-holders or under-tenure-holders which will hold good universally or even in the large majority of cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure (or under-tenure) or a ryoti holding, a *talukdar*, tenure-holder or under-tenure-holder may cultivate land forming part of his *taluk*, tenure or under-tenure, while the person commonly called a ryot may have sub-let his entire holding and may not himself cultivate a single square foot. It is impossible, therefore, to say that under all circumstances the person who cultivates is a ryot, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or under-tenure-holder, then we find ryots also sub-letting and receiving rents from their tenants in actual occupation. If hereditability be tried, the ryot's interest, the ryot's holding is heritable as well as the *taluk*. Is transferability the test? The ryot's *jama*, independently of Acts X. of 1859 and VIII. of 1869, is commonly transferable by custom. Is saleability for its own arrears set up as the true distinction? The landlord of his own option brings ryots' holdings to sale in

execution of decrees for rent, while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees, while in other districts the rent of many *taluks* is but a few rupees. It is true that a tenure-holder or under-tenure-holder is not liable to enhancement upon the grounds applicable to a ryot having a right of occupancy; but this distinction stops here, for the existing law does not define the grounds upon which the rent of a tenure or under-tenure can be enhanced.

Quantity of land included in a single demise selected as the ground of distinction between Ryoti Holdings and Tenures or Under-tenures.

§ 21. Under these circumstances we have come to the conclusion that the quantity of land included in a single demise will afford the most reasonable ground of distinction in the case of the class of tenants under discussion. Although at the present time, and under the altered condition of agricultural society, actual cultivation is no longer the essence of a *ryoti* tenure, we think that the original conception of a "ryot" was that he entered on the land for the purpose of cultivating it or bringing it under cultivation, either by his own personal labour, or by that of his servants or followers, or by means of persons who would occupy portions of the land, giving him in return a share of the produce according to the custom of the country, and afterwards a money rent, when it suited both parties to make this arrangement. A *ryoti* holding being created in this manner, it did not cease to be such because the ryot subsequently sub-let (there being nothing either in his contract or in the custom of the country to prevent him from doing so), and practically converted himself into a middleman, which is only another name for a tenure-holder or under-tenure-holder. This process of conversion is going on, and has long been going on, in every district of Bengal. That, while undergoing this process, there should be some doubt as to how far the tenant was to be governed by the incidents of the *ryoti* condition which he is leaving, or by those of the tenure condition to which he is approaching, is only natural. It is not possible so to adapt legislation as to make exact provision for this transition state: but looking at what we take to be the true conception of a ryot, and finding it impossible to ignore the custom of sub-letting, we think it reasonable to say that, whether a tenant subsequently sub-lets the whole or part of the land demised to him, it is not easy to presume that he had any intention of assuming the position and status of a ryot, if the quantity of land included in the original demise was so large that it could not be cultivated by a single tenant with such means and assistance as are usual in the country.

Person to whom more than 100 bighas let by one demise to be a Tenure-holder or Under-tenure-holder.

§ 22. We have therefore enacted (section 11) that, notwithstanding any custom or contract to the contrary, every person to whom more than one hundred standard bighas of land have been let by a single demise, otherwise than for a term or year by year, shall be deemed to be a tenure-holder or under-tenure-holder within the meaning of sections 8, 9 and 10. If the lessor were a proprietor, the lessee will be a tenure-holder; if the lessor were a tenure-holder or under-tenure-holder, the lessee will be an under-tenure-holder of the first, second degree, and so on. We have made possession necessary to complete the demise in order to avoid the risk of litigation, which, in this country, is so common when persons, out of possession but relying on titles that have to be established in courts of law before they can be enforced, grant leases to persons who are prepared to speculate in law-suits. We have made these provisions applicable to tenancies created as well before as after the commencement of the Act. We have further declared that every such tenure or under-tenure, which has been held for twelve years, shall be permanent and transferable. The quantity of land selected for the purposes of these provisions is, of course, an arbitrary quantity; but we think it reasonable to draw the line at one hundred bighas, having regard to what has been said above. It may be well to observe that, although the person who holds more than one hundred bighas is made a tenure-holder (or under-tenure-holder), whether he or his landlord wishes it or not, the person who holds one hundred bighas or less may be a tenure-holder or a ryot, as he and his landlord wish and agree.

Provisions of Chapter I. as to Tenure.

§ 23. We must content ourselves at this stage with stating the rule which we propose to apply for distributing tenants such as those whom we have

Holders and Under-tenure holders.

described under the heads of ryots and tenure-holders or under-tenure-holders. The effect of this rule cannot be clearly shown or fully understood until we have explained the sections of the Bill which deal with the position and define the rights of ryots, and to these we shall come presently in due course after noticing the provisions of Chapter I., which deals with tenure-holders and under-tenure-holders. The present law provides that *no dependent talukdar or other person, possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryot*, who holds his taluk or tenure, otherwise than under a terminable lease, at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to enhancement of such rent, anything in section 51 of Regulation VIII. of 1793, or in any other law, to the contrary notwithstanding. We have retained these provisions, substituting the words "tenure-holder or under-tenure-holder" for the words above italicised. We have further made it clear that the Permanent Settlement intended is in all cases that of Bengal, Behar and Orissa made in 1793, and not, as regards any district or area subsequently settled, the Permanent Settlement of such district or area.

Those who have held a fixed rent not changed since Permanent Settlement, not liable to enhancement.

Presumption of holding at fixed rent since time of Permanent Settlement from evidence of of holding at such fixed rent for twenty years.

§ 24. We have also retained the presumption provided by the existing law that when the rent of a tenure is proved not to have been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period. It has been decided that this presumption may be rebutted by evidence of the creation of the tenure at some period subsequent to the Permanent Settlement, and we have introduced words to this effect into the section of the Bill. It has been pressed upon us that this presumption bears very hardly upon zemindars; that if a tenure-holder succeeds in proving payment of rent for twenty years at the same rate, it is very difficult, if not impossible, for his landlord to rebut the presumption which upon this is raised by the Act; that it thus becomes dangerous to allow tenure-holders to remain undisturbed paying the same rent for twenty years; and that zemindars are in consequence forced into litigation, lest their rights should pass away *sub silentio*. We have considered these arguments, and they have failed to convince the majority of us that a case has been made out for altering the law, especially now that more than twenty years have elapsed since the statutory presumption was created. If the law were now changed, the change would destroy titles which have become perfected by the presumption. The zemindar has it in his own power, by preserving a proper record of transactions affecting tenures not entitled to the benefit given by the presumption, to prevent prejudice to his own interests in the future. Looking at the question from another point of view, it is very much more difficult for a tenure-holder to prove a title from the time of the Permanent Settlement, than for the zemindar to prove that the tenure was created, or the rent fixed at a later period, or that the rent has been changed on one or more occasions since the Permanent Settlement. We have made one exception to the general operation of the presumption, that is to say, in the case of tenures in an estate *not permanently settled*. We have provided that these shall not be protected upon the expiry of a temporary settlement, unless the right to hold them for ever at a fixed rate of rent has been expressly recognized in settlement proceedings by a Revenue authority empowed by Government to make definitively or confirm settlements.

Exception in the case of tenures in estates not permanently settled.

Section 51 of Regulation VIII. of 1793 Dependent Taluks held from time of Permanent Settlement protected from enhancement save in special cases.

§ 25. We have retained the provisions of section 51 of Regulation VIII. of 1793, namely, that a dependent talukdar who has held his *taluk* since the time of the Permanent Settlement is not liable to enhancement, except upon proving (1) that the proprietor under whom he holds is entitled to enhance either (*a*) by the special custom of the district, or (*b*) by the conditions under which the *taluk* is held; or (2) that the *talukdar*, by receiving abatements from his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it; but we have extended these provisions to tenures and under-tenures, and have added two *explanations*.

[1] In the paragraphs that follow *tenures* only will be spoken of in discussing what applies to *tenures* and *under-tenures* alike. When there is any difference in the law applicable to *under-tenures*, it will be specially noticed.

The number of tenures or under-tenures, which can now be affected by these provisions and which have not fallen within the protection of the law explained in the two previous paragraphs, is probably very small. The first explanation, taken from a decided case, is that in order to entitle to the benefit of the section it is sufficient to show that a tenure was in existence at the time of the Permanent Settlement, and could have been registered in the Collector's office, even though it was not actually registered. The second explanation is that an abatement of rent granted for land taken under the provisions of *The Land Acquisition Act*, 1870, is not an abatement within the meaning of the section, or, in other words, that the fact of having received such an abatement will not render a tenure-holder liable to enhancement of rent. We shall notice other points connected with the enhancement of rents of tenures when we come to discuss the general question of enhancement.

Permanent tenures and under-tenures declared heritable, devisable, transferable, &c.

§ 26. We have enacted that all permanent tenures shall be heritable, devisable, capable of being transferred by sale, gift or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the civil courts. We have here merely stated what we believe to be in accordance with the accepted usage of the country. We have included in the Chapter which treats of tenures so much of the old Regulation VIII. of 1819 as relates to the legal incidents of a *patni taluk*. We have here made no change, but we have expressly declared a *patni taluk* to be devisable, in order to obviate any doubt which might arise upon this new enunciation of the old law.

Law as to Ryots entitled to hold at Fixed Rates, reproduced without material alteration.

§ 27. Chapter II. of the Draft Bill is concerned with ryots who are entitled to hold lands at fixed rates of rent. We have here reproduced, without any very material alteration, the existing law, which is closely analogous to the law applicable to tenure-holders who have held since the time of the Permanent Settlement, making it clear here also that what is intended is the Permanent Settlement of 1793. We have added a few explanations, which embody the result of decided cases, declaring, in the first place, that when rent is payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of the law; and, in the second place, that the operation of the rule as to holding at a fixed rate is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which with it formed a single holding, or amalgamated with other land into one holding, so long as the rate of rent has not been altered by any of these transactions. The observations made above in § 24 as to the twenty years' presumption are applicable to the case of this class also. We have further provided, in accordance with the decided case, that this presumption may be made even though the ryot do not plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been changed since that time, if only there is nothing in his statements inconsistent with its having been so held. We have here also made an exception similar to that explained above in § 24 to meet the case of lands in temporarily settled estates.

A Right of Occupancy in land how acquired.

§ 28. We now come to Chapter III., which treats of *ryots who have acquired a right of occupancy*. We have provided (section 19) that, subject to the provisions of section 11 (see above § 22), any ryot who for a continuous period of twelve years has as a tenant held, or has as a tenant occupied and cultivated, land, and paid rent for the same, has a right of occupancy in such land. The words "as a tenant" have been introduced to show that holding or occupation as a trespasser will not create the right. We have seriously considered whether the acquisition of a right of occupancy should not be limited in all cases to the actual cultivator of the soil. Having examined the subject in all its bearings, we have come to the conclusion that such a rule, if laid down, would exercise a disturbing influence, the immediate benefit to be derived from which appears doubtful to some of us, and the ultimate consequences of which none of us can pretend to forecast with any reasonable certainty. If all *korfas* or under-ryots were converted into ryots having or able to acquire a right of occupancy, some of us think that the rate of rent for occupancy ryots would be forced up to such a point that a right of occupancy would be valueless, as it would become necessary to convert the superior ryot into a tenure-holder or under-tenure-holder, and to take the present *korfa* rates of rent as the measure of the rates to be hereafter payable by the occupancy ryot. We have therefore decided to make no material change in this respect in the present law, which

Trespasser cannot acquire.

Actual cultivation not necessary to its acquisition.

gives the right of occupancy to a ryot who "cultivates" or "holds", merely substituting for "cultivates" the more precise expression "occupies and cultivates". The term "holds" will, of course, include, as now, a ryot who has sublet in *bhagjote* or otherwise. We may observe that the law, as thus expressed, is in harmony with what we have stated to be our conception of the term "ryot" (*ante* § 21).

Ryot must continue to pay rent, as well as hold or occupy.

§ 29. We have made it necessary that the ryot should continue to pay the rent, as well as to hold or occupy the land. This appears to us to be just and fair; and it follows the rule laid down by the Privy Council in the somewhat analogous case of land which is wholly submerged by a river, the property in which will continue to belong to the former proprietor, if he continues to pay revenue therefor, so that he will be entitled to land formed again on the same site. We have followed the present law in providing that in the computation of the twelve years, the time during which his father or any other person, *from whom a ryot has inherited*, has held the land may be added to the time during which the ryot has himself held; but that, in the case of a *transfer otherwise than by inheritance* before the completion of the twelve years, whether with or without the consent of the landlord, the time during which the transferer has held may not be added to the time during which the transferee has held, unless the landlord has expressly consented in writing that it shall be so added. According to the decisions the two periods cannot be added together to make up the period of twelve years. We have modified this by saying that they may be added when the landlord expressly consents in writing. Following the Case-law, we have provided that a ryot is not precluded from acquiring a right of occupancy by the fact that the landlord under whom he has held for the whole or part of the twelve years had no title, or by the fact that such landlord was a coparcener.

Calculation of time when same ryot has not held or occupied during the whole twelve years.

Right of occupancy may be acquired under landlord who has no title, or who is a coparcener.

Cases of possible doubt in which it is expressly declared that a right of occupancy shall be acquired.

§ 30. In order to obviate doubts that may arise, and some of which have arisen, upon the present law, we have expressly declared by way of explanation that a right of occupancy may be acquired (1) by a person holding immediately under a *mukarraridar* or *istemrardar;* (2) by a person holding immediately under the tenure-holder created by the Act (section 11) when more than one hundred bighas have been let under a single demise; (3) by a person occupying land immediately under a ryot having a right of occupancy, when the land is held *otherwise than for a term, or year by year;* and (4) by a person occupying *khamar, nijjote, or sir* land immediately under a proprietor, when such land is held *otherwise than for a term, or year by year*. The first of these four cases is new: a majority of us think that the interest of a *mukarraridar* or *istemrardar* so far partakes of the nature of a tenure that the person holding immediately under him should be allowed to acquire a right of occupancy. The second case is necessary to complete the status of what we may call the "statutory tenure-holder". The third and fourth cases merely follow the existing law as interpreted by the courts.

Cases in which a right of occupancy cannot be acquired.

§ 31. We have also thought it expedient to state by way of explanation certain cases in which a right of occupancy cannot be acquired. A proprietor, tenure-holder, under-tenure-holder, *mukarraridar*, *istemrardar*, or *ijarahdar* cannot acquire a right of occupancy in land which forms a portion of his estate, tenure, under-tenure, *mukarrari* holding, *istemrari* holding, or *ijarah*, respectively. Although an *ijarahdar* cannot, as such, acquire a right of occupancy in land included in his *ijarah*, yet he will not lose a right of occupancy previously acquired in land, merely because such land is included in a subsequent *ijarah*. A right of occupancy cannot be acquired in land held for a term, or year by year, under an occupancy ryot, or in *khamar*, *nijjote*, or *sir* land held for a term, or year by year, under a proprietor. Finally, a tenant may not acquire a right of occupancy, if at the time of being first let into possession he have made with his landlord a written and registered contract that no such right shall be acquired. As to this last case, we may observe that, although we think it inadvisable to prevent parties altogether from contracting themselves out of the operation of the Act, we think it desirable to require in all cases the clearest evidence of their intention to do so.

Legal incidents of a right of occupancy.

§ 32. We have defined (section 20) the legal incidents of a right of occupancy, and first of all we have declared it to be transferable by private sale or gift, and devisable by will; and we have enacted that the consent of the land-

lord shall not be necessary to the validity of any such transfer or devise. It is not necessary to recapitulate here the arguments for and against transferability which have been fully stated in the Appendix to the Digest. We think it sufficient to say that, having carefully considered these arguments, a majority of us are in favour of transferability. But, although we allow the ryot to sell his holding, we prohibit him from mortgaging it. We think that this will most effectually prevent the ryot and his holding from falling into the hands of the *mahajan;* and that the danger, which some persons apprehend, of *mahajans* becoming the owners of occupancy holdings, while the *quondam* ryots will remain on the land in a degraded condition of serfage, will thus, to a considerable extent, be obviated. We believe that a ryot, whom no persuasion will induce to sell his land, can very easily be led to borrow a few rupees upon the security of it for a wedding or a *sradh*, or for some purpose of emergency. A bad season, sickness, or not uncommonly his own improvidence, prevents him from repaying the loan, which is rapidly swelled by interest. He thus gets more and more into the *mahajan's* hands, and the hope of extricating himself and recovering his position finally disappears altogether, the result being that the *mahajan* gets a decree, brings the holding to sale, and purchases it himself for much less than its real value.[1] A *mahajan*, who will readily lend a little money on a ryot's holding in the hope of ultimately realizing a very considerable profit by foreclosing his mortgage, will have no desire to purchase the same holding at anything like a reasonable price with the intention of becoming a capitalist farmer. In order to render effectual the prohibition against mortgaging, we have enacted that any such mortgage shall be void to all intents and purposes, and that no court of justice shall take cognizance thereof, or give effect thereto in any judicial proceeding whatever (section 20, clause (*d*)): and we have further enacted that a right of occupancy, though saleable in execution of a decree for its own rent, shall not be saleable in execution of any other decree (section 20, clause (*a*)).

Transferability

Occupancy holding may not be mortgaged.

§ 33. We have declared that a right of occupancy shall be heritable according to the law of inheritance to which the tenant is subject, but that no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent (section 20, clause (*c*)). This is merely an authoritative enunciation of what is accepted as customary law. When a ryot, who has a right of occupancy, dies leaving no heirs and having made no will, we have enacted that the landlord shall be entitled to take possession of the land. This also is in accordance with the present practice.

Occupancy holding heritable according to the law of inheritance of the ryot

Lapses to landlord on death of ryot without heirs

§ 34. As an occupancy holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a ryot ought no longer to be ejected from such a holding for non-payment of rent. We have accordingly enacted (section 20, clause (*e*)) that no ryot may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof. When a ryot is ejected on account of a breach of any such stipulation, we have provided that he shall be entitled to compensation for improvements under certain provisions which will be noticed hereafter. Mr. O'Kinealy is strongly opposed to forfeiture for breach of the conditions of a lease, and would allow equitable relief in all cases in which the landlord is not actually endamaged, or the security for his rent impaired. Courts of equity have always regarded conditions for forfeiture with disfavour, proceeding on the principle that they are intended to secure the payment of the rent and to prevent injury to the landlord's reversion; that while the landlord is entitled to avail himself of his legal right to effectuate these ends, he ought not to be permitted to go further and use it for purposes of oppression or harsh or vindictive injury. Mr. Field so far agrees with Mr. O'Kinealy as to think that the point ought to be considered if the Bill comes before the Legislature in its present shape.

Ryot may not be ejected from occupancy holding for non payment of rent or other cause

Forfeiture for breach of conditions of lease

[1] Because the sale is held at a distant court-house and not on the spot, where the value of the holding is known, and because persons are unwilling to compete with the man of money, who has a lien on the holding. If the provision of the last Code of Civil Procedure, which forbids the decree-holder to bid without the special leave of the court, were so applied in these cases as to make it the *mahajan's* interest that outsiders should bid, there is little reason to doubt that better prices would be realized.

Rent payable in kind not to be more than half the gross produce in the case of staple crops.

Rule in case of special crops

§ 35. We have enacted (section 21), in accordance with the opinion of the majority, that when the rent payable by a ryot for an occupancy holding is paid in kind, and the ryot receives no assistance from his landlord towards producing the crop, such rent shall not exceed fifty per centum of the gross produce in the case of staple crops; that in the case of special crops, if the landlord and tenant have contracted in writing for any particular share of the gross produce, such contract may be enforced, but in the absence of any such contract, the landlord shall not be entitled to recover any other or greater rent than twenty-five per centum of the average annual value of the gross produce. These provisions, as drafted, will operate upon existing rents payable in kind so as to reduce them in those cases in which more than half the gross produce is now taken. Mr. Dampier is opposed to any interference with existing rents. In many parts of Behar and elsewhere the landlord now receives nine-sixteenths of the gross produce. Mr. Dampier and Baboo Pyari Mohun Mukherji consider this proportion to be so well-known and so prevalent that it should not be altered by the Bill, at least so far as concerns existing tenancies. It appears to the other members of the Commission that one-half the gross produce is the very largest portion that a landlord should be allowed to take; and they regard the impoverished condition of the ryots, from whom more has been taken, as a strong argument for putting in force a rule which should have been suggested to landlords by that moderation and forbearance which were made express conditions of the Permanent Settlement. Mr. O'Kinealy would limit the maximum rent payable in kind by an occupancy ryot to 40 per cent., or two-fifths of the gross produce.

Points of distinction according to the Bill between tenures or under tenure and occupancy holdings

§ 36. The distinction between tenure-holders and ryots in the present law is not very clear or very well marked, as we have had occasion to remark. We have, we hope, made it somewhat clearer and better marked in the Draft Bill. We are satisfied that it would not be possible to demarcate exactly the boundaries between these two interests without the risk of injury to vested rights, and possibly the further risk of making greater confusion than that which we have sought to remove. It may, however, be useful to point out certain points of distinction which arise upon the sections of the Bill in their present form. (1)—An occupancy holding may not exceed one hundred bighas in size: a larger area becomes a tenure or under-tenure by the operation of section 11. A tenure or under-tenure may be of any size. (2)—When there is no occupancy right previously existing, a right of occupancy is acquired by holding, or by occupying and cultivating. The law is silent as to the acquisition of such a right by contract. A tenure or under-tenure can be acquired by contract, and this is the usual mode. It may also be acquired by holding for twelve years, but only in the case of land exceeding one hundred bighas in area and let otherwise than for a term, or year by year. (3)—Both the tenure-holder or under-tenure holder and the occupancy ryot can sub-let. In the absence of a registered contract to the contrary, the under-tenant in all cases acquires a right of occupancy against the former; but against the latter he acquires such right only when the land is sub-let otherwise than for a term, or year by year. (4)—Both can sub-let, but the rents of the under-tenants of the tenure-holder or under-tenure-holder cannot be enhanced so as to exceed *twenty-five* per cent. of the average annual value of the gross produce, while the rents of the under-tenants of the occupancy ryot may be raised to any amount which they will pay and not give up the land, or, if such under-tenants have acquired a right of occupancy to *thirty* per cent. of such average annual value (section 23, clause (*c*)). (5)—The rents of both the tenure-holder (or under-tenure-holder) and the occupancy ryot may be enhanced, but the grounds and limits of enhancement are different. (6)—Both may cultivate, but the tenure-holder or under-tenure-holder acquires no right of occupancy by his cultivating. (7)—Both interests are heritable, but if the tenure-holder dies without heirs, his tenure escheats to Government, while, if the occupancy ryot dies without heirs, his landlord can resume the land. (8)—A tenure or under-tenure can be taken in execution for any debt. An occupancy holding can be sold in execution only of a decree for arrears of its own rent.

Enhancement of rent the most difficult question for consider-

§ 37. By far the most difficult question presented for our consideration in preparing an amended law of landlord and tenant for these Provinces is that of the enhancement of rent. As soon as the Legislature recognized a right

on the part of any class of tenants to be protected against arbitrary eviction by their landlords, it became absolutely necessary to provide by legislation some means whereby the rents payable by such tenants may be settled and determined. It has been contended by some very able authorities that the only safe means of settling rents is by the unfettered action of the principle of competition, and that any attempt on the part of the Legislature to set aside this principle and substitute for it any other principle, must be mischievous in its consequences to the community concerned. It is no part of our present duty to examine what general truth there may be in this contention as applied to those countries, whence have been derived the data upon which the existing system of Western political economy is based; but that this contention should not be accepted as applicable to the state of things in this country, and should not be allowed to influence our legislation upon the subject in hand, we entertain no doubt. In order to make the reasons for this opinion more easily intelligible, it is necessary to consider what rent is in these Provinces, and this is a subject of some difficulty, owing in part to the inherent ambiguity of language, when the same term is applied to several things, the substance of which depends upon different conditions. ation how this question has become a necessary one

§ 38. The theory of rent, first put forward at the close of the last century and revived some twenty years later by eminent political economists, is that *rent is what land yields in excess of the ordinary profits of stock.* It is assumed that no land will be cultivated which will not yield the ordinary profit derivable from capital employed in other undertakings. If land yields less than this, capital will not be employed in cultivating it; if it yields more, the excess will be appropriated by the owner of the land, who will otherwise withhold the use of this natural agent. As the prices of produce rise, the profits from capital employed in agriculture increase. Land which in one year yields no excess over and above the ordinary profits of capital, may in the following year yield some excess, and so pay rent. Of all the land in cultivation that which is yielding no excess must necessarily be the worst, *i. e.*, as regards inferiority of soil or situation, or proximity to markets, or facility of communication, &c. When such worst land begins to yield an excess, to pay a rent, land of a still inferior class will be cultivated and will then be the worst land in cultivation, superseding what has just commenced to pay rent. Thus, the worst land for the time being under cultivation is the standard for estimating the amount of rent which will be yielded by all other land that pays rent. This theory presupposes capital, presupposes capitalist farming conducted with an immediate view to obtaining from capital invested in agriculture the ordinary rate of profit afforded by capital invested in other undertakings. It depends upon certain laws respecting profits, wages, prices, which, as one of the greatest political economists has pointed out, are true only so far as profits, wages and prices are regulated by competition—only so far as the persons concerned are free from the influence of any other motives than those arising from the general circumstances of the case, and are guided as to those by the ordinary mercantile estimate of profit and loss. There are in these Provinces no capitalist farmers. We do not include under this denomination persons who have embarked capital in producing for export silk, indigo, tea, or similar articles other than food. There is little or no capital employed in agriculture, unless we include under this term the commonest agricultural implements, the seed grain necessary to produce the next year's crop, the food necessary for the cultivator's subsistence till the next harvest, and it may be, a small stock laid by against the year of famine that is sure to come round in the cycle of seasons. The immediate object of cultivation is subistence, not profit on capital. There is no wages-fund: there are no labourers paid from capital. There are practically no manufactures, no non-agricultural industries, no great cities of work where a surplus rural population can find employment. To such a state of things, to a community so circumstanced, the theory of rent propounded by Mr. Ricardo and other political economists of the same school has no application; and any adjustment of the relations between landlords and tenants in these Provinces, based upon this theory, must, we apprehend, involve serious risk of error. Different theories of rent. The Ricardo theory.

§ 39. A more modern school of political economists, dissatisfied with the previous theory, would discard all reference to degrees of productiveness, would Theory of rent propounded

by the more modern political economists.

abolish the standard obtainable from the worst land under cultivation, as being misleading and practically useless to inform a disputing landlord and his tenants how much rent exactly each holding should pay; and would define rent simply as surplus profit,—that is, *the excess of profit after the re-payment of the whole cost of production, beyond the legitimate profit, which belongs to the tenant as a manufacturer of agricultural produce.* According to their analysis no landlord or tenant ever thinks of, or enquires after, the worst land under cultivation and which pays no rent, in order to ascertain what is the proper rent for any other land. But an intelligent tenant about to take land will carefully endeavour to inform himself, 1*st*, as to the quantity and quality of the produce that he can fairly reckon on obtaining from the land; 2*nd*, as to the expenditure necessary to raise this produce; and 3*rd*, as to the price which this produce will realize when raised. In order to ascertain the *first* particular, he will consider the quality of the soil, the climate, the water-supply, the possibility of improvement by manuring or other means, &c. To inform himself on the *second* point, he will see if the soil is light and friable or heavy and stiff, and so on—whether his plough will require two horses or four, whether the manure necessary to good cultivation is to be had in the vicinity or must be brought from a distance, what is the rate of wages for local labour, &c. With respect to the *third* item, he will inquire as to the best neighbouring markets and the prices usually there current, and he will have to consider the distance of the land from the market and the cost of conveying the produce from the fields where it is grown to the mart where it can be sold. Having ascertained all these particulars, the intending tenant will be in a position to calculate the balance of profit which he may expect to have left to him after defraying the cost of cultivation, and this will determine the rent which he can pay for the use of the land. Thus rent depends upon the prices realized by agricultural produce compared with the cost of its production; or, in other words, rent exists because a selling price is found, which yields a surplus, an excess of profit beyond what the tenant requires. This theory is a very much more practical one than the former one, but it also proceeds upon the supposition that capital is employed, that money wages of labour are paid, that the produce is converted into money, that an account is kept of outgoings and incomings, and an accurate balance struck. It can have no proper application where all these circumstances do not exist.

Conditions to which any theory of rent must be adapted in India.

§ 40. Let us now see what is the state of things in this country, what are the conditions to which any possible theory of rent must be fitted in order to make it suitable to the people. We know that according to ancient and established usage the dues of Government from the land in India have from time immemorial consisted of a certain proportion of the annual produce of every *bigha*. Such was the rule in the time of the old Hindú Rajas, when Government in all or most cases collected these dues direct from the cultivators. The Mahomedan Government retained this rule with some modifications of detail in carrying it into effect. It is not very material whether the proportion of the produce so taken by the State be called rent, or revenue, or a tax; nor is it necessary to our present purpose to determine whether the property in the soil belonged to the State, or to the cultivators, or in coparcenary to both. Once land was cleared and brought completely under cultivation, this proportion of the produce was taken in every case. The ryots cultivated for subsistence, not with any immediate view to profit. Whether more land should be taken into cultivation depended, not upon whether profits had risen, but upon whether the land already in cultivation was sufficient to raise food for the people. The State demand in no way depended upon profits, and was in no way regulated by any calculation of the total value of the produce and the cost of producing it. The proportion taken by the Government was determined by the Government itself; and, as the ryots were well off or the reverse, according as Government took less or more, and left them more or less, the well-being and comfort of the people depended upon arbitrary discretion exercised with despotic power. We know from history, that while the earlier Hindu Rajas took only one-sixth, as much as a half was taken in later times; and discretion continuing to be the measure of exaction, the very barest subsistence was in some places and on some occasions left to the cultivators of the soil. If any calculation was made for the purpose of fixing the Government demand, it was

too often a calculation of what was the least that could be left to the cultivators to enable them to live and produce the next crop. There are some who think that "custom", even in those days, and in the absence of law authoritatively promulgated by a Legislative Department of the State, regulated the share of the produce taken from the ryots; but it has been well remarked that custom might equally well be pleaded in justification of every species of exaction and oppression.[1] Our predecessors in fact (to quote the language of the Board of Commissioners of 1818[2]) do not seem to have admitted as a principle any other general limit to the Government demand than the amount which the cultivators could afford to pay, and the established Government share too often exceeded this limit.

The Mahomedan system

§ 41. Mahomedan law recognized only two persons as having an interest in the soil, namely, the Government and the cultivator. There can be no doubt that the cultivators had rights in the land. What exactly these rights were has been warmly disputed; and we shall not attempt to define them or fix their limits. The ryots cultivated the land and paid *khiraj* to Government. This *khiraj* was a share, a proportion of the produce, which was paid either in kind or in the money which represented its commuted value which the Government itself fixed. As long as the *khiraj* was paid, the cultivators were left in possession of the land, though this possession as well as all the other terms of the relation depended upon the will of a despotic ruler. Failure to pay the *khiraj* had for its consequences punishment and the loss of all rights in the land. Such is the general outline of the relation between the two parties having an interest in the soil. Any attempt to express it in terms taken from a wholly different system of interests or rights, and embodying different collections of ideas, must fail to convey an accurate conception of the Mahomedan system, and may be misleading. If it be asked—Is *khiraj* rent, or does it include rent, the answer must be in the negative, if by the term "rent" is meant rent according to either of the theories of rent propounded by European political economists. It was no part of the Mahomedan system that any person should stand between the Government and the actual cultivators and intercept a portion of the *khiraj* paid by the latter; but partly from the difficulty, if not impossibility, of collecting the whole of the *khiraj* by State agency, when the boundaries of the Empire were enlarged by conquest; partly from the fact that in some of the conquered Provinces persons were found in possession of various rights superior to the cultivators, and it was difficult to get rid of these persons, while their services and local experience could well be utilized for the collection of the *khiraj*; and partly from other causes which it is not here necessary to detail,—there sprang up a middle class intermediate between the State and the cultivators, and who as contractors or farmers or having some pre-existent rights which the Mahomedan Government did not care to investigate or define, collected the *khiraj* of large tracts from the cultivators and paid it to Government. Being placed in a position of advantage,[3] the members of this middle class grew rapidly into importance, and in the decadence of the Mahomedan empire acquired considerable power. While using the whole authority of the State to exact by way of *khiraj* all that could be got from the cultivators, they use their utmost ingenuity to keep as much of this as they could for themselves, and send as little of it as possible to the Government treasury.

State of things how modified by the policy of the English Government.

§ 42. Such was the condition of affairs to which the East India Company succeeded; and one of the first problems presented to the new English Government for solution was the settlement and definition of the rights of this middle class. How this great question was debated, how it was determined by declaring the *zemindars* who composed this class to be proprietors, and how the wisdom of this determination has ever since been questioned, are now portions of the constitutional history of the Anglo-Indian Empire. The zemindars, being thus confirmed in their position, continued to collect the *khiraj* from the cultivators and pay it over to the State. The terms of the settlement and the influence of English ideas worked, however, some important changes. 'In the

[1] See Lord Cornwallis' Minute of the 11th February 1793: and paragraph 31 of the Revenue despatch of the 15th January 1819.

[2] See paragraph 317 of the Report dated 27th October 1828.

[3] This must not be understood to convey the idea that all these persons were *novi homines*. Many of them were *Rajas*, or otherwise men of position and family before the Mahomedan conquest.

first place the Government limited and fixed for ever the amount of *khiraj* which it was to demand at the hands of the zemindars. The zemindars being declared to be "proprietors of the soil", "landholders", "landowners", it followed as a natural consequence from this and from the introduction of English ideas that the ryots have come to be looked upon as their tenants; the payments made to them by the ryots in kind or in money came to be regarded as rent; and the payments made by the zemindars to the Government were termed revenue. When the governing race, with whom rested the executive power and the administration of justice, approached the subject of the relation of zemindars and ryots with those ideas of the English law of landlord and tenant formulated in the Regulations and present to their minds, the result, almost inevitable, was that the former state of things underwent considerable change.[1]

Ryots had rights at the time of the Permanent Settlement, although they were not then fully ascertained or defined.

§ 43. That at the time of the Permanent Settlement the ryots had rights was admitted then and has never since been denied, at least by persons possessed of information on the subject. These rights were, however, very uncertain and indefinite.[2] That they were so is not surprising when we reflect upon the arbitrary nature of the preceding Government upon the want of exact rules of law, and the non-existence of a trained judiciary proceeding by fixed methods of enquiry and determination. The Government of 1793 were unable to ascertain and define these rights fully and accurately. The most able members of that Government felt and expressed their inability to do so with the means of information then at their deposal.[3] They were also apprehensive lest enquiries into these rights should excite suspicion in the minds of the zemindars that the assessment of the revenue was not really meant to be permanent:[4] and they indulged a strong hope that zemindars and ryots would, like landlords and tenants in England, adjust all matters in dispute between them by contract.

And these rights were expressly saved.

But, although the Government of 1793 did not then fully ascertain and define the rights of the ryots, it saved these rights in express terms, and reserved to itself the power to ascertain and settle them at any future time at which it saw fit to do so.[5] The exercise of this power inherent in Government is, of course, in no way dependent upon this express reservation, the value of which consists in its being a deliberate recital and acknowledgment of the existence of such rights at that point of time.

Right to have proportion of produce payable by ryot determined by Government

§ 44. Whatever difference of opinion there may be as to the other rights which belonged to the ryots in 1793—and at this distance of time it is natural that there should be differences of opinion about what, being then uncertain, was not at the period made definite, and much of the evidence of which has since perished in the lapse of nearly a century—we think that there can be no doubt as to one right, the right, that is, to have the proportion of the produce payable by the ryot determined by Government. Such, beyond dispute, had been the practice of the Hindoo and Mahomedan sovereigns;[6] and the Government

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[1] To show the influence of English ideas, we may refer to Mr. Shore, whose view of the position was so clear and able. Although he "admitted, on the ground of precedent, the right of the Government to interfere in regulating the assessment upon the ryots", he objected "to the policy and propriety of this interference without evident necessity". "The regulation of the rents of the ryots", he observed, "is properly a transaction between the zemindar or landlord and his tenants, and not of the Government; and the detail attending it is so minute as to baffle the skill of any man not well versed in it".—*Minute of the 18th June 1789*, para. 433.

[2] "With respect to the ryots, their rights appear very uncertain and indefinite."—*Mr. Shore's Minute* of the 18th June 1789, para. 388.

[3] See the Minute of the Earl of Moira, dated 21st September 1815, paras. 143-144.

[4] "It may be urged that, unless Government intends to raise the revenues of the lands in future, any further knowledge of the value of them beyond what we at present possess is unnecessary; and to demand the accounts of it would only tend to excite suspicions in the zemindars that the present assessment would not be perm. ment. The Court of Directors are themselves satisfied upon this point, and discourage the idea of local investigation into the value of the lands, directing that when the tribute of each zemindar is fixed, he shall remain undisturbed in the administration and enjoyment of his estate, and be assured that as long as he pays his stipulated revenue he shall be subject to no scrutinies or interposition of the officers of Government, unless where a judicial process may become necessary to adjust claims between him and tenants, or talukdars, or partners of the same zemindari".—*Mr. Shore's Minute of 18th June 1879*, para. 473. See also *Revenue-letter of 15th January* 1819, para. 31. It may be observed that the Court of Directors in 1819 admitted this to have been a mistake.—*See Revenue letter of 18th January 1819*, para. 38.

[5] First clause of section 8, Reg. I. of 1793: *Revenue letter of 15th January 1819*, para. 39, where it is said—"It is also a circumstance which is not to be overlooked that, although so many years have elapsed since the conclusion of that settlement, yet no resort has been had to the exercise of the power we then expressly reserved of interfering for the purpose of defining and adjusting the rights of the ryots. We conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference." See also *Revenue letter from Bengal*, dated 17th July 1818, paras. 146-148.

[6] See above § 41. See also *Fifth Report of the Select Committee on the Affairs of the East India Company*, p. 24.—"In point of fact the original amount seems to have been anciently ascertained and fixed by an act of the Sovereign."

of 1793, though it created the zemindars "proprietors", using a term which seemed to convey the absolute disposing power of an English landlord, never intended to destroy this right or to abdicate the function cast upon it by the ancient law of the country.[1] The existence of any rights of possession in the ryots would have been incompatible with an arbitrary power in the zemindars to fix the rents; and thus both the necessity of the thing and the ancient law of the land required that this power should be exercised by the Government.

Such rents as are payable by the ryots to the zemindars could not properly be left to be settled by competition, and have not been settled by custom.

§ 45. We entertain no doubt that the ryots of 1793 possessed substantial rights: but even if they had no rights whatever, we think that Government could not consistently, with the proper discharge of its functions, leave the settlement of what we shall now call the rents payable by the ryots to the uncontrolled influence of competition.[2] There is in these Provinces no capitalist farmer between the landowner and the labourer; the produce of the land is divided between two classes—the landowners and the labourers—the latter sustaining the character of capitalist to the limited extent to which capital enters into the question at all. In such a state of things rents can be settled only by (1) custom, or (2) by competition, or (3) by law. Custom has not as yet settled rents in the Lieutenant-Governorship of Bengal, owing in part to the disturbing influence of our own legislation, especially the Revenue Sale Law; and their settlement cannot be left to the slow operation of a principle which has hitherto failed, and of the future efficacy of which there is no present prospect. Then as to competition, while population is sparse and land is plenty, when the supply of cultivators is limited and the demand for them active, the ryots have the best of the position, and can secure favourable terms. As population increases, the tables are gradually turned, and where cultivation of the soil is the only means of subsistence, the ultimate effect of unrestricted competition must be that the landowners can dictate their own

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[1] "In regard to proprietary right to the land, the recent enquiries had not established the zemindar on the footing of the owner of a landed estate in Europe, who may lease out portions and employ and dismiss labourers at pleasure; but, on the contrary, had exhibited, from him down to the actual cultivator, other inferior landholders, styled talukdars and cultivators of different descriptions, whose claim to protection the Government readily recognized, but whose rights were not, under the principles of the present system, so easily reconcileable as to be at once susceptible of reduction to the rules about to be established in perpetuity. These the Directors particularly recommended to the consideration of the Government, who in establishing permanent rules were to leave an opening for the introduction of any such in future as from time to time might be found necessary to prevent the ryots being improperly disturbed in their possessions, or subjected to unwarrantable exactions. This, the Directors observed, would be clearly consistent with the true practice of the Mogul Government, under which it was a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied; 'and this,' they further observed, 'necessarily supposes that there were some limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar.'"—Here follows the passage quoted in the previous Note.—*Fifth Report.*

"We consider it equally a principal interwoven with the constitution of the different Governments of India, that the quantum of rent is not to be determined by the arbitrary will of the zemindar."—*Revenue letter from Bengal, dated 7th October 1815.*

[2] The late Mr. John Stuart Mill defined *cottier tenure* as embracing all cases without exception in which the labourer makes his contract for land without the intervention of a capitalist farmer, and in which the conditions of the contract, especially the amount of rent, are determined not by custom but by competition. In a very instructive chapter of his work on Political Economy, in which he draws a parallel between the tenure of land in Ireland and India, he says—"The produce, on the cottier system, being divided into two portions, rent and the remuneration of the labourer, the one is evidently determined by the other. The labourer has whatever the landlord does not take; the condition of the labourer depends on the amount of rent. But rent, being regulated by competition, depends upon the relation between the demand for land and the supply of it. The demand for land depends on the number of competitors, and the competitors are the whole rural population. The effect therefore of this tenure is to bring the principle of population to act directly on the land and not, as in England, on capital. Rent in this state of things depends on the proportion between population and land. As the land is a fixed quantity, while population has an unlimited power of increase, unless something checks that increase, the competition for land soon forces up rent to the highest point consistent with keeping the population alive. The effects therefore of cottier tenure depend on the extent to which the capacity of population to increase is controlled, either by custom, by individual prudence, or by starvation and disease."

"It would be an exaggeration to affirm that cottier tenancy is absolutely incompatible with a prosperous condition of the labouring class. If we could suppose it to exist among a people to whom a high standard of comfort was habitual, whose requirements were such that they would not offer a higher rent for land than would leave them an ample subsistence, and whose moderate increase of numbers left no unemployed population to force up rents by competition, save when the increasing produce of the land from increase of skill would enable a higher rent to be paid without inconvenience, the cultivating class might be as well remunerated, might have as large a share of the necessaries and comforts of life on this system of tenure as any other: they would not, however, while their rents were arbitrary, enjoy any of the peculiar advantages which methayers on the Tuscan system derive from their connection with the land: they would neither have the use of a capital belonging to their landlords, nor would the want of this be made up by the intense motives to bodily and mental exertion which act upon the peasant who has a permanent tenure. On the contrary, any increased value given to the land by the exertions of the tenant would have no effect but to raise the rent against himself either the next year or at farthest when his lease expired. The landlords might have justice or good sense enough not to avail themselves of the advantage which competition would give them; and different landlords would do so in different degrees. . . . . The only safeguard against these uncertainties would be the growth of a custom insuring a permanence of tenure in the same occupant without liability to any other increase of rent than might happen to be sanctioned by the general sentiments of the community.

terms to the ryots, who must either accept them or starve.[1] The whole agricultural population are thus reduced to a condition of misery and degradation which must seriously reflect upon the Government under which such a state of things has come to pass. The land of a country belongs to the people of the country: and, while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the great majority of the community, if the alteration or amendment of the law relating to land can by itself, or in conjunction with other measures, obviate or remedy the misfortune.

Theory of rent applicable to Bengal and Behar.

§ 46. Whether, then, the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same, namely, that the ruling power ought to determine the rents payable in these Provinces by the ryots to the zemindars. In this view the appropriate theory of rent is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits of capital, but that it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the zemindars, or those to whom the zemindars have transferred their rights. If it be asked on what principle Government should determine this proportion—what share shall be considered fair and equitable—our answer is—Such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate, to a reasonable extent, in the progress and improving prosperity of his native land.

In applying this principle, no single standard possible for all parts of these Provinces.

§ 47. When we come to apply this principle to the solution of the question before us, the first reflection that occurs to us is that there is not presented to us a *tabula rasa* on which we may inscribe a single rule, or set of rules, which shall be of uniform application. The progress of nearly a century has created relations of persons and conditions of things, to sweep away which for the purpose of establishing an ideal normal standard would involve an interference with vested rights and a disturbance of existing associations which would irritate the feelings of those concerned, and render the remedy worse than the disease. Were we to set up any single average standard of comfort for the whole agricultural population of these Provinces, we might find that, while it placed the Behar ryot in a position of ease calculated by

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. . . . When the amount of rent is not limited either by law or custom, a cottier system has the disadvantages of the worst metheyer system. . . . . When the habits of the people are such that their increase is never checked but by the impossibility of obtaining a bare support, and when this support can only be obtained from land, all stipulations and agreements respecting the amount of rent are merely nominal. The competition for land makes the tenants undertake to pay more than it is possible they should pay, and when they have paid all they can, more almost always remains due." It would seem to follow that if custom or the habits of the agricultural population are not strong enough in such a community to keep rents within such a limit as will allow a reasonable standard of comfort for the cultivators of the soil, the Legislature ought to impose such a limit: and that, failing this, a state of wretched cottierism must be the result when the pressure of population has reached a certain point.

[1] The difference between Behar and the Eastern Districts of Bengal appears to illustrate remarkably these two stages of competition. At the time of the Permanent Settlement, Government, while declaring its right to do so, forbore to determine the rents payable by the ryots to the zemindars, and, in fact, left them to be settled by the parties themselves as best they could—(See *Revenue Letter of the 15th January 1819*, paragraphs 48-54). In Behar the population had come to press closer upon the land than in Eastern Bengal. The landowners accordingly had the advantage in the former Province, and were able to maintain the system of payment in kind and push rents up to a point which leaves the cultivator but a bare subsistence; while in the latter part of the country, unreclaimed land being abundant and cultivators scarce, the ryots had the advantage and were in consequence able to procure land on very favourable terms. Thus, various tenures at low rents came into existence in the Eastern Districts, to which we find nothing similar in Behar. It must not, however, be supposed that these tenures, if rents be left to unrestricted competition, will act as a complete barrier to the normal tendency. The tenure-holders have rapidly become middlemen, and, where population has begun to press on the land, have sub-let. The sub-letting has in many places reached several degrees. It may be that the existence of these intervening interests, which are readily bought and sold, and the possession of which is much coveted, will exercise a healthy influence in creating a better standard of comfort; but, although the condition of things at their present stage appears fair, it is impossible not to dread a decline into cottierism hereafter, especially as there are no checks upon the increase of population. To show that this apprehension is not without foundation, we quote the following passage from a letter of the pleaders of the Rungpore Courts, written in 1876:—

"The demand for land is, indeed, very great, and as the cultivating class is steadily increasing, the competition for obtaining land, and with it the rate of rent, is also on the increase. So strong is the desire for land on the part of this class that they sometimes bid for it at a rate of rent which would leave them no margin for profit. The zemindars, in their turn, do not fail to take advantage of this state of things to increase their revenue."

the sudden change to engender sloth rather than energy, it fell short of the existing requirements of members of the agricultural community in some other parts of the country. The inequalities in existing rents are due to causes which have their roots in the past history of the best part of a century. The density or sparseness of population in different districts; the quantity of unreclaimed land available to meet the requirements of a growing community; the energy of particular landlords; the proximity or distance of courts or Magistrates able to repress this energy, when it exceeded the bounds of law; the force of resistance offered by the ryots, varying widely in different parts of the country; the indolence of other landlords; the frequency of Government management; the irregular incidence of famine; the unequal opening up of the country by railways and roads, in respect of which all districts do not yet enjoy equal facilities; the action of the great rivers—these and other causes have produced imparities, of which we think that account must be taken in any endeavour to settle rents, or the enhancement of rents, by legislation. We are, therefore, all agreed that existing rents should be taken as the basis of operation; in other words, that no attempt should be made to replace these existing rents immediately by any new and uniform standard; and that, apart from the usual and recognized grounds of abatement, there exists no necessity for reducing rents generally in any part of the country. At the same time we think that, in regulating future enhancement, regard may reasonably be had to existing inequalities, and that landlords, who have already benefited more than other landlords by the favourable action of some of the causes above-enumerated, are not entitled to an equal accession of advantage in the future.

No simple uniform rule of enhancement possible

§ 48. This brings us to the important question—Can a simple uniform rule be laid down for enhancement? We think this question must be answered in the negative. The subject has been fully considered by able and practical minds upon more than a single occasion; and none of these deliberations has produced any simple, practicable rule which, applied to all conditions and under all circumstances, will afford satisfactory results. In taking up the question anew, and seeking for such a rule, we have examined all that has been done by those who have preceded us in the quest, and we have made what further search we could in the light of their knowledge and experience; and the ultimate conclusion at which we have arrived is that no such rule can be devised or formulated.[1] It would, of course, be possible to lay down some rule which, like Draco's Penal Code, might be embodied in a single section and apply to all cases; but when it came to be put into operation it would work so much injustice to both parties that each would be equally eager for its repeal.

Immense varieties in the subject matter on which rent depends

§ 49. The uncertainty of agricultural experience is very great in every country, but probably in no country is it so great as in India. This increases the difficulty of providing against fluctuations of season by average calculations; and the consequences of failure in those calculations are terribly aggravated through the absence of capital, by drawing upon which the agriculturist is in other countries enabled to tide over an abnormal succession of bad years, hoping to replace what is so consumed by increased energy when circumstances are more favourable. The fertility of land depends in India, as in other countries, upon the nature of the soil and sub-soil; and there are in these Provinces numerous varieties of both, well understood by the ryots. In settlement proceedings all over India, from before Akbar's time down to the present period, we find these varieties mentioned and taken into account. Some soils are cultivated with much less labour than others; and this is a very important consideration, where so much has to be done by manual labour, where the race of cattle which supplements the exertions of man is deficient in muscle and vigour, and where the absence of capital and the nature of the country prevent the introduction and use of more effective agency. The rich alluvial *chur*[2] yields a bumper crop in return for the mere exertion of sprinkling the seed on its

[1] "Rents vary in every village, not merely with the diversities of soil and crops, but also with reference to the caste of the cultivators. The inference to be drawn is, therefore, that *no common rule can be laid down*, and that the failure of past attempts to settle the matter is chiefly to be attributed to the desire which the public officers have had to render that simple and uniform, which is in its nature various, and to their impatience of the detailed investigation by which alone accuracy can be secured."—*Resolution of Government of India, dated 1st August 1822.*

[2] *Chur* is equal to an island or alluvial formation thrown up by a river.

surface; while the stiffer soil of the higher *mâts*,[1] baked during the burning months when the heaven is as brass and the earth as iron, and scarcely moistened by the tardy rains, is with difficulty turned up by the straining oxen and the toiling ploughman to be ready in time for the rice seedlings, which one by one have to be planted out through the full expanse of every field. Assuming land to be unlimited in its supply, the average labouring family can in the former case cultivate more land and raise more produce than in the latter case. If half the produce be given as rent, it makes an enormous difference to those who have to subsist on the remainder, whether the half of a hundred measures be given or the half of three hundred. Where the size of the holding is not limited by the amount of labour necessary for cultivation, it may be limited by the pressure of population and the extent of uncultivated land still available. Thus, similar results are produced by different causes. Then, we have differences in situation almost infinite. Where rent is payable in money, part of the crop must be sold to obtain the coin with which the ryot may discharge his liability. If the mart is near, the labour and cost of carriage are inconsiderable, and the ryot can easily go to market when prices are most favourable; but these become a serious item when the produce has to be carried over roadless plains and across unbridged *nullahs* to a distant and uncertain staple. Some fields are near the village and the threshing-floor, and no sooner is the crop ripe than it is garnered, while others lie in a distant *mât* and their produce has to be carried on bullocks' backs or men's heads, many an ear falling by the wayside, to where it can be threshed and winnowed, and this perhaps after the thieving birds and hungry cattle, or it may be the wild hogs from the neighbouring *jangal* have sadly diminished the husbandman's profits, while he is waiting his turn for the busy oxen or the help of his neighbours. Here the water is deficient for the *amun* paddy, and there the *aus* is drowned by an unforeseen inundation. In one part of the country land is sufficiently plentiful to allow a fourth to lie fallow every year, while in another part the soil never gets rest, and there is no manure to keep up its strength, even the droppings of the cattle being collected and dried for fuel. In one *pergunnah* the adult population are healthy and strong to labour; in another, the climate is so bad that one-third on an average are down with fever and ague, and the remaining two-thirds in various stages of convalescence lack the physical vigour necessary to successful toil. In one district the cultivators of the soil have to support but one set of landlords; in another, they have half a dozen or even more middlemen under different names and with various rights having come between the zemindars and the ryots. These are some of the many causes upon which depend the numerous inequalities and variations[2] in the subject-matter with which rent is concerned in these Provinces. No simple rule of uniform application can allow for all these: and, unless they are allowed for and taken into account in individual cases, there cannot be fair and equitable rates of rent, for, in order to be really so, they must be fair and equitable in the concrete as well as in the abstract. The conclusion then to which we feel guided upon the whole subject of settlement of rents and enhancement is that the safest course for the Legislature is to lay down certain broad lines upon which the officers of Government (whether in the judicial or executive department) shall proceed in this matter, at the same time providing certain positive checks which experience has shown to be necessary in order to prevent sudden and great changes in the respective conditions of landlords and tenants in Bengal.

General conclusion upon the above premises.

§ 50. We pass from this analysis and discussion of the general subject to the particular provisions which we believe can safely and beneficially be made for the enhancement of rent in these Provinces. It will be convenient to state, in the first place, the existing law upon this important matter. (1) There are no express provisions for the enhancement of the rent of tenures or under-tenures; and the want of a definite enactment on this point has undoubtedly given rise to much expensive litigation. (2) The rent of a ryot having a right of occupancy can be enhanced upon any one or more of the following three

Existing substantive law of enhancement of rent.

[1] *Mât* is equal to a plain, the open cleared space between the belts of trees that generally enclose a village.

[2] When rents are paid in money, the fluctuations in the price of grain are another disturbing element:—"India, more than any other country, is subject to sudden and great fluctuations in the price of grain, so that in many parts of it assessments in money, originally fair, have from this cause alone become excessive."—*Appendix to Minutes of Evidence of the Select Committee of the House of Commons on the Affairs of the East India Company*, 1832, p. 66.

grounds, viz., (*a*) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent; (*b*) that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot; (*c*) that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him. As a necessary preliminary to the enhancement of the rent of an occupancy ryot, a notice of enhancement must be served on him before the close of the year preceding that for which the enhanced rent is claimed, and the failure to serve such notice is fatal to the demand of enhancement; (3) in the case of ryots not having a right of occupancy, that is, all ryots who have held for less than twelve years, there are no express provisions for enhancement, and the practical result is that, if any such ryot refuses to pay an enhanced rent demanded of him, he is evicted by his landlord, though, if he is allowed to remain in possession, more than a reasonable rent cannot be recovered from him.

Proposed rules of enhancement for tenures and under-tenures.

§ 51. Taking these three branches of the subject in order, we have, in the first place, provided for the enhancement of the rent of tenures and under-tenures by enacting that in any case in which such rent is liable to enhancement (there are cases in which it is not so liable) it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity, or, where no such customary rate exists, up to such limit as to the court shall appear fair and equitable, but so that the profit of the tenure-holder or under-tenure-holder shall not (in the absence of certain special circumstances to be noticed hereafter) exceed thirty per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting such rents—see section 9 of the Bill. It may be observed that, according to the rule contained in section 8 of Regulation V. of 1812, ten per cent. of the balance just mentioned was allowed to the tenure-holder. This section was repealed by Act X. of 1859, but by some oversight no provision was substituted by this Act, though the principal as being fair and equitable in itself and usual by reason of the provisions of the Regulation was on several occasions acted upon by the courts after that Act was passed. It appears to a majority of us, after careful consideration, that the limit of *ten* per cent. is too low, and we have accordingly allowed a higher limit, namely, that of a maximum not exceeding *thirty* per cent. in ordinary cases.[1] We have provided for the special and well-known case of *jangalburi* holdings by enacting (section 12) that when more than one hundred bighas of land have been demised for reclamation purposes, more than half being at the time unreclaimed, and the whole having been subsequently reclaimed, the rent of the tenant may not be enhanced so as to leave him a profit of less than twenty per cent. of the net balance above-mentioned, and the court may allow him such profit in excess of twenty per cent. as to it appears fair and equitable. In order to prevent these new provisions from working hardship by any sudden and great change, we have annexed the following checks:—(*a*) the enhanced rent shall not in any case be more than double the previous rent; (*b*) the court may direct that the enhancement shall take effect gradually, or, in other words, that the rent shall increase yearly during any number of years not exceeding five, until the limit of the enhancement allowed has been reached; and (*c*) that rent, once enhanced, shall not be altered for ten years, unless on account of alluvion or diluvion—(section 9 of the Bill). We have further settled a doubtful question by expressly enacting (section 8) that, in the absence of an express contract to the contrary, every tenure-holder and under-tenure-holder shall be liable to pay additional rent for land gained by alluvion, and shall be entitled to abatement of rent for land lost by diluvion. We here follow a principle, recognized by the Government in dealing with the cognate subject of revenue, and in accordance with justice, equity and good conscience. We have elsewhere (section 18) applied the same principle to ryots entitled to hold land at fixed rates. We

[1] Mr. Justice Levinge mentions in his Minute on Act X. a case in which *two-thirds* (he does not say whether of the gross or net collections) were given to the landlord and the residue to the middleman. If the calculation was here made on the net calculations, the collection expenses being taken at ten per cent., the middleman got 30 per cent., being $100 - \frac{2(100-10)}{3} - 10$

think it unconscionable that when the land has ceased to exist, out of which issues the benefit in which landlord and tenant participate, the tenant, in addition to losing his own share of this benefit, should have to make good the landlord's share, thus conferring upon him the advantage of insurance without the payment of a premium. Then, as it is reasonable that he who seeks equity should do equity, it follows that the tenant, who has been relieved from the payment of rent for land which he has ceased to enjoy, should pay rent for additional land added to his enjoyment. We shall have occasion to return to the question of enhancement of the rent of tenure-holders and under-tenure-holders in connection with another portion of our subject.

Grounds of enhancement of rent of occupancy ryots retained, but an attempt made to improve them.

§ 52. Coming now to the second branch of this portion of the subject, namely, the enhancement of the rent of occupancy ryots, we have, after due consideration, decided to retain substantially the grounds of enhancement to be found in the existing law. We have, however, endeavoured to benefit by the experience of the last twenty years so as to make these grounds clearer and more readily intelligible to the parties affected by them. In doing this we have found it expedient to split up the second ground into two. As re-arranged in section 22 of our Draft Bill, the grounds of enhancement now stand thus:—

(1) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages *in the vicinity*;

(2) that the quantity of land held by such ryot has been *shown* by measurement to be greater than the quantity for which rent has been previously paid by him;

(3) that the productive powers of the land held by such ryot *as compared with such powers at the time when the rent was fixed, or at any subsequent time*, have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual*;

(4) that the *prices* of produce *in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed, or at any subsequent time*, have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual.*

The first of these grounds corresponds with the first ground in the present law; the second with the third; and the third and fourth with the second. We shall make some observations as to each in the above order.

First ground of enhancement, that rent paid is below the prevailing rate, presents no real difficulty.

§ 53. In the first ground we have substituted the words "in the vicinity" for "in the places adjacent". We think that the proof will be facilitated by enlarging the area from which the materials for evidence may be taken. We have added some *illustrations* to indicate the meaning of the words "the same class of ryots". In other respects this ground of enhancement has not presented any difficulties; and the cases do not show that, so far as it is concerned, any amendment of the law is very urgently required. The idea of a *pergunnah rate* of rent, a prevailing rate paid by tenants of the same class within a certain tract of country, has long been familiar to the people, and, where such a rate is generally known and acknowledged, a landlord has seldom, in the absence of other disturbing circumstances, to put a ryot into court in order to get him to pay rent according to this rate. The germ of dispute and litigation does not lie here. The landlord who seeks to put an individual ryot on an equality with his brethren has public opinion generally in his favour, for human nature in Bengal, as elsewhere, is envious of an individual better off than the rest of the community, and takes pleasure in the assertion of the principle of equality when violated by the superior condition of a neighbour. It is when the landlord seeks to raise the rate for all ryots when all are threatened with a common misfortune that unanimity for self-defence, and combination against the general enemy, rule the village counsels, and leave the zemindar no hope of success without some such coercion as the law permits.

Enhancement on the ground of greater quantity of land being found on

§ 54. The second ground is, in our opinion, misnamed a ground of *enhancement*. If the quantity of land held by a ryot is found upon measurement to be greater than the quantity for which he has been paying rent, and if he is compelled to pay rent for the excess, the whole rent payable by him is increased;

but the *rate* of rent payable is not increased, and the term 'enchancement' might well be confined to this latter increase. The cases under this head may, broadly speaking, be divided into two classes. The first class includes cases of encroachment—where the ryot has encroached upon the uncultivated or unoccupied land of his landlord and has surreptitiously enlarged his holding. These cases are of less frequent occurrence in the more settled parts of the country, where there is little or no waste, where the fields are tolerably well demarcated by *ails* or low boundaries, about a foot and a half high, and every field has a well-known owner. In less populous districts where cultivation is in patches, and a considerable portion of land lies fallow or waste, the opportunity and temptation to encroachment are greater, and the *bonâ fide* cases of this class are consequently more numerous. Under the second class come those cases in which there is little pretence for saying that any encroachment has really taken place, but a measurement, or the threat of a measurement, is used as a means of obtaining an increase of rent, which the landlord thinks he ought to have, and which he sees no other way of obtaining. There is a dispute about the proper length of the measuring pole, and the landlord, having made the measurement with a pole of his own choosing, hopes to get this dispute settled in his favour, or he trusts to various well-known devices of the measuring *amin* to make the land more than it really is. Even where the landlord is too honourable to resort to such practices, his *amlah* make rich gains out of a measurement; and the ryot, who would refuse to satisfy their cupidity, would find the area of his holding considerably enlarged in the measurement papers, while, if he can pay sufficiently handsomely, he finds no difficulty in getting it untruly understated. Then it may be that rent has not usually been paid at so much per bigha, the practice being for a *jama* or holding, roughly described as containing so many bighas, to be let at a lump sum; and the landlord, taking this rough description as an accurate one calculates the rate of rent, and being able to show that the holding contains more land than is shown by this rough description claims extra rent for the excess. The absence of written leases makes this too commonly possible. We have endeavoured to provide for some of these cases by *illustrations*. The best remedy for the perversion of this portion of the law will be by rendering the results sought to be achieved by such perversion more easily achievable in a legitimate manner and upon the grounds legitimately applicable.

measurement to be in ryot's possession. This is not enchancement properly speaking. Cases under this head distributable into two classes.

§ 55. The third ground of enhancement is that the productive powers of the land have increased. Now, they may have increased (1) by the agency or at the expence of the ryot, (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case, the ryot is not liable to have this rent enhanced; such is the effect of the words "otherwise than by the agency or at the expense of the ryot". If the ryot has improved his holding, has rendered his land more productive by expending his labour or capital upon it, the benefit of the improvement will be his, and his alone. Thus, the law encourages thrift and industry by guaranteeing the enjoyment of their fruits to the persons who exercise these qualities. Between the second and third cases the present law makes no distinction, and it gives the whole of the increase to the landlord, except in cases of customary rents, in which the rule is limited by the principle of proportion enunciated in the Great Rent Case. In our Draft Bill (section 23) we have given the whole of the increment in the *second* case to the landlord, for the same reasons for which the existing law gives it to the ryot in the *first* case. As to the *third* case, it may fairly be said that, however just it may be to give the whole increase to the landlord when the whole of it is due to his agency or expenditure, the justice of doing this is not so apparent where the landlord has contributed nothing to bring about this increase, and in this respect he and the ryot stand upon equal ground. If it be admitted that the ryot has certain rights, has a certain interest in the land as well as the zemindar, why, it may be asked, should not the former as well as the latter participate in the benefit which accrues to the common property from external sources, over which neither has any influence or control? Accepting the justice of this argument, we have thought it reasonable and equitable in this case to divide the increment equally between the landlord and the tenant as a general rule. It may, however, be observed that when the increment exceeds the old rent the effect of one of the positive checks which we have provided, namely, that no enhanced rent shall be more than double

Enhancement on the ground that the productive powers of the land have been increased. Important to consider by whose agency the increase has been effected.

the former rent, may be that the ryot will receive more than half of the benefit (see clause (*b*), section 28 of the Bill). In order to ascertain the measure of the increase it is necessary to take some point of time in the past between which and the present the comparison may be made. The want of a definite rule on this portion of the subject has been greatly felt. We have provided that the present, *i.e.*, the increased productive powers of the land, may be compared with the productive powers of the same land as they were when the rent was originally fixed, or as they were *at any subsequent time*. The first part of this rule requires no explanation and no comment. A comparison between the productive powers as they now are and the same powers as they were when the rent was first fixed is fair to both parties; but the principle cannot be left depending upon a rule so limited, because in a large proportion of cases the productive powers of the land at the time that the rent was fixed cannot be ascertained. It may have been so long ago that no living evidence is now forthcoming, or it may be that some such evidence is to be had, but that it is utterly unreliable, being merely oral testimony, given long after about that which at the time received no particular attention, and partaking of the usual worthless nature of such evidence. In any such case, if the principle of comparison is to be put in force at all, it becomes necessary to compare the present with a point of time subsequent to that at which the rent was originally fixed. If the productive powers at such subsequent time were less than when the rent was first settled, the calculation will be to the ryot's disadvantage, as the increase upon the original productive powers will appear greater than it really has been. If, on the other hand, the productive powers at such subsequent time were greater than they originally were, the increase will appear less than it really has been, and the ryot will be benefited to the detriment of the landlord. As a matter of fact, we think that neither contingency is very likely to have happened to any great extent in the majority of cases, and that no great injury is likely to be done to either party. We are agreed that when enhancement of rent is allowed on the ground that the productive powers of the soil have increased, there ought to be a reasonable prospect that the causes to which such increase is due are likely to be permanent in their effect and not merely temporary and casual; and we have added to this ground of enhancement words to this effect.

What point of past time to be compared with the present.

Cause of increase of productive powers ought to be not merely temporary or casual.

§ 56. The fourth ground of enhancement is that the value of the produce has increased. It appears to us that this ground of enhancement is altogether distinct from an increase in the quantity of the produce due to an improvement in the productive powers of the soil. We have in consequence entirely separated these two grounds. In stating this fourth ground, we have, in the first place, substituted the term "price", which is equivalent to money-value, for "value", which includes other values besides money-value. We have thus made the language more precise without altering what we understand to have been the intention of those who framed Act X. of 1859. The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency[1] for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes. It is not possible to separate the respective effects of these causes and so calcu-

Enhancement on the ground of increase in the prices of produce.

Examination of increase of price.

[1] Political Economists lay down the proposition that while the rate of profit and interest has a downward tendency in a progressive community, rent (*i.e.*, in their sense of the term 'rent'), on the contrary, tend to rise incessantly—that, in fact, all progress in wealth and population tends to a rise of rents.—See *Mill's Political Economy*, Vol. I., p. 386; *Systems of Land Tenure in Various Countries*, p. 221. Where capitalist farming prevails, any fall in the usual rate of profit and interest must operate directly to increase rent: but, apart from this cause, rent increases in a progressive community. An advancing population has a tendency to create a larger demand for food, and the price rises in consequence.

late how much of the increase is due to each. The landlord ought, however, according to our view, to participate in the benefit arising from each. The first cause, *i.e.*, the general progress of the community, makes the land more valuable as a natural agent for the production of food. The increase of value, if not taken by the State—and the effect of the permanent settlement is that the State does not take it—must go to those whom the law allows to keep all that interest in land which constitutes property in land. Now the persons, who in these Provinces have this property in the land under the existing law, are the zemindars and the ryots, not the ryots only. Therefore the zemindars, having a share in that complete interest which constitutes property, ought to have also a share in that increase of value which is an accession to that interest. The effect of the second cause is to diminish the value of the rent payable in silver in relation to all commodities, which the landlord can obtain for the money which he receives as his rent. This money, therefore, represents a smaller share of the produce than it did before the relative value of silver fell. It is but equitable, therefore, that the money rent of the landlord should be increased so as to make it represent a share of the produce equal to what it represented when the rent was originally fixed. Then there are other considerations. The benefit accruing from the operation of the first cause is limited by the quantity of the produce which the ryot sells or barters away. In respect of the portion retained for consumption by himself, his family and his cattle, and for seed, there is no direct benefit from the rise in price, because this portion does not come into the market. Here the first cause differs from the second, and it differs also from the third ground of enhancement, under which the excess quantity of produce obtained from the increased productive power of the soil represents so much clear benefit. From this analysis it will appear that the component elements of this ground of enhancement are sufficiently complex; and, looking at the above considerations, it is not very easy to say how the increment arising from increase of price ought to be divided so as to make the division fair to both parties.

§ 57. Here, as in the case of the third ground, it is possible to conceive that the increase of price may be brought about (1) by the agency or at the expense of the ryot, or (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case, as the law now stands, the rent of the ryot is not liable to enhancement. He receives the full benefit of the increase in price which he has himself brought about. That is the effect here also of the words "otherwise than by the agency or at the expense of the ryot", and we do not propose to alter this. At the same time it is not easy to suppose a case in which the ryot could effect an increase in the price of the produce solely by his own agency or at his own expense. In so far as better prices may be due to improved means of communication, which have been effected by the road cess or public works cess funds, we have provided that the ryot shall pay so much less enhanced annual rent as is equal to the annual sum which he has contributed to these funds. In the second case, or where the increase of price is due entirely to the zemindar's agency, or has been brought about altogether at his expense, it appears to us, on the whole, to be reasonable that he alone should receive the entire benefit. A case of this sort might occur where a zemindar had opened a new *hát* and improved the means of communication between it and the lands of his estate. In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zemindar nor the ryot, but by general causes, the reasoning used above (§ 55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule here also will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the ryot and the remaining one-third to the landlord.

Increase of price may be due to the agency (1) of the ryot, or (2) of the landlord, or (3) of neither. Who should receive the benefit in each case.

§ 58. As to the period of past time between which and the present the comparison should be instituted, and as to the causes of the increase being not merely temporary or casual, the remarks above made upon the third ground of enhancement apply. Then as to the markets, the prices of which should

Comparison to be made between prices of what times and places.

govern, we have provided that the prices in the locality or at the usual markets are to be taken. There ought to be sufficient evidence of these prices procurable from the local *mahajans* and their books or from other sources. We have further facilitated the proof by providing for the preparation and publication of annual official price lists, the object and use of which we shall explain hereafter.

Prices of what crops to be taken as the basis of calculation.

§ 59. The next question which has engaged our attention in connection with this part of the subject is the very important one of the species of produce which shall be taken for the calculation of prices. Shall these prices be calculated for all the crops actually grown on the lands, as well for special crops requiring special care and cultivation, as for the ordinary food crops of the district. During the period antecedent to British rule it was usual to vary the rent with the crops cultivated. Section 56 of Regulation VIII of 1793 enacted that "where it is the established custom to vary the pottahs for lands according to the articles produced thereon, and while the actual proprietors of land, dependent talukdars or farmers of land and ryots in such places shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease and a stipulation that in the event of *the species of produce being changed* a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and the event of *any new species being cultivated* a new engagement with the like specification and clause is to be executed accordingly". It can well be understood that a despotic Government or its more despotic subordinates observed carefully any circumstances that would enable the cultivators to pay more than had previously been obtained from them. Where the share of the State was taken in kind, a less proportion was always accepted for special crops in consideration of the greater care and expense necessary to their production. Where the share of the State had been commuted to a money-payment, very high rates were imposed on the lands on which special crops were grown. These rates were too often regulated more with reference to the aggregate value of the gross produce, which was very considerable, than upon a due allowance for the cost of production, which was a very much larger item in proportion than in the case of ordinary crops. In reasonably good years the ryot was able to pay and make a good profit; then came a year of failure, it may be when he had made a larger venture than usual, and the little capital vanished, while the high rates had to be paid, and perhaps the *mahajan's* assistance had to be called in for this. The memory of the year of failure survived, kept green by the mahajan's long surviving claim, while the years of success from which little or nothing was saved were soon forgotten. It thus happened that the exaction of very high rates for fields devoted to special cultivation discouraged and retarded agricultural improvement. It may be well to draw here a distinction between higher rates for superior land capable of producing superior crops and therefore suited for these special crops—such rates being paid without direct reference to the particular crops actually produced from year to year—and higher rates assessed with direct reference to the crops annually grown. The latter are sure to run much higher than the former, and in a bad year the loss and the cause of it are felt more distinctly. This distinction and the bad effects of levying a high rate directly on the crop were understood many years ago. As early as 1792 the Government wrote as follows in the Revenue despatch of the 12th December of that year:—"Apprehending that the present great demand for sugar and the consequent rise in the price of it might induce some of the landholders to exact from their ryots an enhancement for the ground appropriated to the cultivation of the cane; and, as such shortsighted policy would have discouraged the extension of the cultivation of it, and consequently prevented the establishment of a trade in sugar between this country and Europe, we thought it advisable to issue a notification to the landholders prohibiting any enhancement of the rent of the sugarcane lands upon the ground of its being repugnant to the usage of the country as well as detrimental to their own interest and that of the State at large." We find the Directors writing out in 1837 to the following effect:—"It is the productive power of the land, and not its actual produce, that should be taken as the guide in making the assessment. By this mode the best des-

Question of special crops considered.

cription of encouragement is given to the cultivator to extend cultivation and raise crops immediately beneficial and profitable to himself, and such a system, we have on a former occasion observed and are still of opinion, would not ultimately be found detrimental to the interests of the State." We do not, therefore, propose to interfere with any existing classification of lands based on their superior quality or capability of producing special crops, but we think that, in regulating enhancement of rent on the ground of rise of prices, account should be taken of the ordinary or staple crops only. A different rule would, in our opinion, tend to discourage the cultivation of new and valuable species of production, and so prevent agricultural improvement. By allowing the Board of Revenue to declare from time to time what shall be taken to the staple crops for particular areas, an opportunity will be afforded of making any new crop a staple as soon as its cultivation has been thoroughly and generally established. As to special crops, such as betel-leaf, tobacco, sugarcane, and such like, we think that, as they are grown only occasionally or in small quantities, and require particular attention and involve special expenditure, they ought not to be considered in settling enhanced rents. We may further observe in support of this view that, in commuting the Tithe into a money-payment in England, staple crops only were taken into account, the staples selected being wheat, oats and barley.

Question of what landlords shall be allowed to enhance rents.

§ 60. With reference to the question of what landlords should be allowed to enhance rent, we were much impressed with a suggestion that *ijarahdars* should not be allowed to enhance the rents of the ryots holding land within the area of their *ijarahs*. On careful consideration it has, however, appeared to a majority of us that as the zemindar's proprietary interest may by law be leased either for a term or in perpetuity, it would not be quite consistent to say that the lessee may not take one particular portion of this interest, if the zemindar chooses to convey it. In proposing a procedure for the enhancement of rents, we have, however, felt ourselves at liberty to say that a mere leaseholder, of whose interest less than ten years remain unexpired, shall not have equal facilities in this respect with landlords having a permanent interest. To take away from zemindars under all circumstances the right of giving their *ijarahdars* authority to enhance rents would be to take from them something which they already have, would curtail the proprietary interest in the form in which it has existed since the time of the Permanent Settlement, and might interfere with vested rights. In giving a new facility, however, we see no reason why it should not be withheld from a class whose existence does not contribute to the welfare of the agricultural community.

Enhanced Rent in certain cases not to be more than double the former rent. Positive checks upon enhancement.

§ 61. Having thus indicated the broad substantive principles which should in our opinion regulate the enhancement of rent, we turn to the positive checks which we think should be applied in order to prevent hardship as the result of the operation of these principles. And first we have provided that when enhancement is allowed on the ground that the productive powers of the soil have increased, or on the ground that prices have risen, the enhanced rent shall in no case be more than double the former rent. It usually happens that the causes which here create the basis of the increase are gradual in their operation, and the cultivator gradually gets accustomed to the enjoyment of the increase. To have to give up and hand over to his landlord any part of what he has appropriated and learned to regard as his own, seems hard to a person who, like an uneducated cultivator, is more prone to consider the present grievance than the past benefit which he has been enjoying. If so much is suddenly taken as to effect a sensible change in his position and standard of comfort, a feeling of injury is excited, which it is impossible to say has not some foundation in reason. If an European were required at a few months' notice to pay four times the rent which he had been in the habit of paying for his house, he would resent it as an intolerable grievance; and if he were compelled to keep the house and pay the quadruple rent, he would regard it as legalized tyranny. Now, a ryot may not be positively compelled to keep his land, but he cannot give it up because it is to him the means of subsistence, and he feels as much bitterness as the European at being forced, upon a few months' notice, to pay treble or quadruple his former rent. We think it reasonable, therefore, that no ryot's rent should be advanced *per saltum* to more than double: and as there may be cases in which even this increase would involve very great hardship, we have further allowed

Progressive enhancement.

progressive enhancement, that is, by a gradual yearly increase for any number of years not exceeding five until the limit of the enhancement allowed has been reached. We have allowed progressive enhancement in all cases in which the Court or the Collector sees fit—cases, that is, falling under all four grounds of enhancement. The double limit we have restricted to the third and fourth grounds. If a ryot has been paying less than the prevailing rate for his land, or if he has encroached and has been cultivating excess land without paying rent for it, the circumstances may be such that a very large and sudden increase would involve hardship or even put it beyond his power to pay, and so his rent may well be raised gradually to what he ought to pay; but there is not any argument that we can see in support of the limit of double rent not being exceeded in these cases. Indeed, in the case of encroachment, it would be a positive encouragement to wrong-doing on a large scale, as all the land taken beyond a certain quantity would be acquired rent-free. We have enacted (section 23, clause (*c*)) that when the rent of an occupancy ryot is enhanced upon the first, third or fourth ground, the enhanced rent shall not be more than one-fourth of the average annual value of the gross produce; or when such occupancy ryot holds under another ryot who has a right of occupancy, not more than three-tenths of such average annual value. A proposition that in no case should the rent of a non-occupancy ryot exceed forty per cent. or two-fifths of the annual average value of the gross produce was lost by a single vote. Finally, we have provided that when rent is enhanced on the third or fourth ground, and a table of enhanced rents prepared by the Collector, such table shall be binding on both parties for ten years. This will not prevent enhancement of rent for land gained by alluvion or abatement of rent for land lost by diluvion during this decennial period: and upon this subject the remarks already made (§ 51 above) are applicable.

Rent limited in certain cases to a fixed proportion of the value of the gross produce.

Right to enhance how far allowed to be affected by contract.

§ 62. How far the right to enhance given by the law should be allowed to be affected by contract between the landlord and tenant is a point upon which we have found it desirable to lay down a two-fold rule. We have provided (section 24) that when a ryot holds under a written lease for a term certain which has not expired, his rent shall not be liable to enhancement during such unexpired term. We have also expressly provided that there shall be no enhancement when a ryot and his landlord have contracted that such ryot's rent shall not be enhanced. It may be thought that in the latter case, and indeed in the former case also, unless the language of the writing was extremely vague, the ryot is sufficiently protected. But we have thought it well, here as elsewhere, to leave as little as possible to construction, and to use express language so as to avoid doubt.

Procedure for enhancement. Importance of this part of the subject

§ 63. We now come to consider the procedure by which effect may be given to the above recommendations concerned with the substantive law. We entirely agree in the view advanced by the *then* Government of India in their Revenue letter dated 7th October 1815:—"Whatever rights the ryots may be declared in theory to possess, the practical benefits arising from any measure of that sort will be very limited, until means shall be devised, on the occurrence of disputed claims, of ascertaining with accuracy and facility the rent which they should individually pay, and an authority created for deciding on all such cases with the utmost promptitude." In treating this part of the subject also we have found it expedient to consider the four grounds of enhancement separately. Before, however, proceeding to analyze the subject in connection with these grounds, it will be important to mention that we have dispensed with the notice of enhancement which is required by the present law, and which was also required by the old Regulations in force before 1859.

Notice of enhancement dispensed with. Reasons for the change

Such a large percentage of enhancement cases have failed, because it was not found that the notice had been served, or because the notice was defective in form, that it has appeared to us highly expedient to do away with a detail, the practical result of which has been to delay and impede a decision of the real question at issue between the parties. We have accordingly made the institution of the enhancement suit to be notice to the tenant. Under the existing law the enhancement notice must be served, in districts or parts of districts where the Fasli year prevails in or before the month of Jeyt, and in districts or parts of districts where the Bengali year prevails in or before the month of Pous. The very proper and reasonable object of this is that the ryot may

know the fact of increased rent being claimed in such time as will enable him to relinquish the land before the end of the agricultural year if he is unwilling to hold it at an increased rent. If the notice is not served in or before the month of Jeyt or Pous, it will not affect the rent of the following year. We have effected the same object by requiring the plaint, in order to affect the rent of the following year, to be presented, in districts in which the Fasli or Umli year prevails, in or before the month of Baisakh, and in districts in which the Bengali year prevails, in or before the month of Aughan, *i. e.*, one month earlier than the time for service of the present notice. This will enable the summons in the suit to be served at or before the time at which the notice is now served, and the tenant will therefore have an equal facility to relinquish the land before the close of the agricultural year if he is unwilling to continue to hold it at an increased rent (section 96 of the draft Bill).

First ground of enhancement—Cases concerned with, may be conveniently tried by what tribunal.

§ 64. Directing now our attention to consider the subject of procedure with reference to the grounds of enhancement singly, and taking the first ground in order, *viz.*, that the rate of rent paid by the ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity—this is a ground upon which a zemindar in the great majority of instances finds it necessary to proceed against a few individual ryots merely. There is no reason why the civil court should not try the questions which have to be decided between the parties; and, as the lands in each case must be different, there is a certain advantage in trying the individual cases separately. Even where the cases exceed a few, as the prevailing rate must be paid by the majority, the ryots against whom the zemindar requires to proceed must yet be a minority of the whole number. Here, if there be no real dispute as to the prevailing rates, and if the question is as to the applicability of these rates to the particular lands held by each ryot, the cases are well tried separately by the civil court. If, on the other hand, there is little dispute as to the nature and classification of the lands held by each ryot, and the main question at issue in all the cases is the prevailing rate, both economy of agency and efficiency of decision are secured by bringing all the cases before a single tribunal at the same time. The question of what is the prevailing rate in the vicinity is more likely to be satisfactorily decided upon all the evidence which the zemindar and all the ryots concerned can produce, than upon fragments of the same evidence in isolated cases, which, if decided upon the evidence in each respectively produced (as they should be), may have to be decided in different and perhaps contradictory ways. We have therefore thought it desirable to give the Collector a concurrent jurisdiction with the civil court in cases depending upon the first ground of enhancement. It may then be asked how we propose, with reference to the above remarks, to bring before each tribunal the cases most proper for it to try. It is not very easy to do this completely and exactly, as must be manifest from the nature of the tests; but, so far as it is possible to accomplish it, we have endeavoured to do so by allowing the landlord to choose his own tribunal in the first instance, and then providing for a transfer of the cases, if numerous, from the civil court to the Collector (section 130 of the draft Bill) if the landlord has in the first instance chosen the former tribunal. If the cases are few and isolated, and the landlord selects the Collector as his tribunal in the first instance, we do not see that the tenant is likely to be prejudiced. In cases of concurrent jurisdiction it is usual to allow the plaintiff to select the tribunal. In the first instance this is necessary; then, where a transfer from one to another tribunal is permitted, the defendant can move for such transfer. When the cases are first instituted before the civil court, or partly in the civil court and partly before the Collector, any tenant can move the civil court to act under section 130, and so can have all the cases brought before the Collector. When the cases are instituted before the Collector in the first instance, we see no advantage to either party in transferring them to the civil court, and we have not provided any way of doing so.

Concurrent jurisdiction given to the Civil Court and the Collector.

Concurrent jurisdiction given also in cases depending upon the second ground of enhancement.

§ 65. Cases proceeding upon the second ground of enhancement, namely, that the quantity of land held by the ryot has been shown by measurement to be greater than the quantity for which rent was previously paid by him, can be tried equally well by the civil and revenue courts. We have here also given a concurrent jurisdiction to these tribunals, and much of what has just been said applies. The cases which would be conveniently tried together by

the Collector are cases in which the ryots on an estate collude together and refuse to point out the plots of land held by them individually. For example, a purchaser of an estate at a sale for arrears of Government revenue may find that the sum total of the quantities of land given by the ryots individually as in their possession falls very far short of the area of the estate. He may proceed to make a measurement, and find that this will help him in no way, because the ryots will not point out the fields occupied and cultivated by each of them. We may observe, in order to make this more intelligible to persons not acquainted with the country, that a ryot's holding very seldom consists, like an English farm, of contiguous fields lying within a ring fence, but is made up of plots, often mere strips of land, in different places on different sides of the village, each ryot having a portion of the good and inferior land and of each of the soils suited for particular species of cultivation. An auction-purchaser who buys at a revenue sale or at a sale in execution receives no assistance from the former proprietor, who regards him as an usurper. The ryots, either dreading an enhancement of rents or regarding the opportunity as a favourable one to throw off some of the burdens imposed by their late landlord, understate the quantity of land held by each of them. Under such circumstances single suits brought against individual ryots and tried separately are infructuous, whereas when a complete measurement of the estate is made the quantity of land in the possession of each ryot is known accurately, and the excess beyond what he was previously paying rent for can be assessed. We are here assuming that the new landlord is able to ascertain the rent previously paid by each ryot, and the quantity of land for which it was paid. There are, however, cases in which an auction-purchaser is unable to obtain this information. We shall hereafter come to the consideration of these cases, for which also provision has been made.

Concurrent jurisdiction given to the civil courts and the Collector in cases depending on the third ground of enhancement.

§ 66. The third ground of enhancement is that the productive powers of the land have increased otherwise than by the agency or at the expense of the ryot. Here also we have given the civil court and the Collector concurrent jurisdiction. These are not, as a rule, isolated cases. It is not easy to conceive any cause which could render the holding of an individual ryot more fertile than previously, without simultaneously affecting the holdings of neighbouring ryots in a greater or less degree. An inundation bringing with it a fertilizing alluvial deposit, a canal supplying water for irrigation, a system of drainage converting a water-clogged soil into rich cultivation, an embankment protecting crops from being drowned and villages from being immersed—these and other possible causes of increased fertility within the meaning of the rule must affect considerable tracts and more than a few cultivators. If the majority of those affected accept the enhanced rates of rent claimed by the landlord, a prevailing rate will be obtained and the landlord can proceed under the first ground of enhancement. If a majority will not accept the enhanced rents claimed, or if the minority who decide to litigate includes a considerable number of persons, the cases can with advantage be tried together, as the cause of the increase of the productive powers of the soil is common to them all, and it is desirable to have the whole of the evidence on this point brought together and considered together.[1] When the landlord does not himself select the Collector's Court in the first instance, the provisions of section 130 of the draft Bill afford a facility for bringing the whole of the cases and the whole of the evidence before this tribunal.

Civil Court not suited for dealing with cases depending on the fourth ground of enhancement.

§ 67. We now come to the fourth and the most important of the grounds of enhancement, namely, that the price of the produce of the land has risen. This is a general cause affecting the length and breadth of the land, and concerning every person in the receipt of rent from the cultivators. Upon the fullest consideration, a majority of us think that the civil court does not here afford the best machinery for adjusting the enhanced rents which ought to be paid by the ryots to their landlords. In the first place, the method of the

[1] Section 30 of *The Code of Civil Procedure* provides that where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of all parties so interested, notice being given by public advertisement or otherwise to such parties. We are not aware that any attempt has ever been made to sue a number of ryots occupying different holdings, making them co-defendants in a single suit in the civil court on the ground that they were all jointly concerned in the question of a prevailing rate, or an increase of productive powers.

civil court is to apply a general principle to particular instances. This general principle is usually postulated. It may be contained in a written law, or in a custom, or may have to be extracted from a number of decided cases. However this may be, the court does not create the principle for the occasion. Its modes of procedure are not suited for doing this, are indeed rather opposed to doing it well or successfully, as they (generally speaking) exclude *res inter alios actæ*, and confine their attention to what has taken place between the parties themselves. To this rule there are some exceptions, the court sometimes dealing with a considerable number of persons who have the same interest in the suit; but none of these exceptions extends so far as the creation of a new general principle applicable to the whole community, or a very considerable class in the community. The authority which makes new general principles or rules is the Government acting in civilized countries in the Legislative Department. The method of doing this is, not to make every individual in the State a party to a formal proceeding and take all the evidence produced by those in favour of, and by those opposed to, the measure—this would be impossible—but to propound the proposed general rule, formulated by persons of supposed superior knowledge and experience, to debate it in public, and to give any class or individual likely to be affected by it an opportunity of making a representation for or against the proposed measure through the proper channel. While we think that, on the one hand, the civil court is not well calculated by its form of proceeding to make a new general rule for the whole agricultural community, or for a portion of that community resident in a district or considerable area, we also think that, on the other hand, the general principle, the general rule which ought to be supplied to the civil court for application to particular cases, cannot well be made by the Legislature, because the general principle required is not a simple one adapted for uniform and universal application, but a complex one to be varied in its application to particular districts, or portions of districts, according to the circumstances existing at the time of its application. These circumstances are capable of being ascertained only by local investigation, and this may be materially assisted by taking evidence in judicial form. The range of inquiry is, in other words, too wide for the civil court, too limited and varied for the Legislature. We think then that the general rise of prices which should regulate the enhancement of rent over a considerable tract of country can best be ascertained and determined by some machinery intermediate between the Legislature and the Judiciary, partaking of the nature of each, but confined to the forms of neither. We have made the Collector the mainspring of this machinery, arming him with judicial powers to take evidence when information can thus best be obtained, assisting him with a staff of subordinates in the working out of details, and subjecting his conclusions to the test of the greater experience and authority of the superior officers of the Revenue Department. We think that with this machinery it ought not to be impossible to ascertain the general rise of the prices of staple commodities during a number of years in a given tract, and apply the measure of enhancement so obtained to the particular cases of individual ryots. We shall come presently to the procedure by which we have attempted to guide the Collector in the performance of the duty thus laid upon him.

Equal facilities for enhancement not afforded to mere farmers and landlords having a permanent transferable interest

§ 68. It will be convenient to mention here what landlords we think should be allowed to take proceedings to enhance in the civil court or before the Collector. We have classified landlords for this purpose under two heads—*first*, landlords having a permanent transferable interest; *second*, landlords having a farming or lease-hold interest in the lands of which the rents are payable to them. Regarding the Collector's tribunal as an increased facility for enhancement, we have thought it inexpedient to afford this increased facility to landlords of the second class in every case. We have accordingly allowed landlords of the first class only to go to the Collector with cases depending upon the *first* and *second* grounds of enhancement, while we have left the civil court open to both classes for these cases. The landlord of the first class may go to either tribunal on the *third* ground of enhancement, but the landlord of the second class, the mere farmer or lease-holder, though the civil court is open to him in all cases, may not call in the agency of the revenue authorities, unless a period of not less than ten years of his interest

remains unexpired. Upon the *fourth* ground the civil court is open to neither class of landlords; but he, whose interest is permanent and transferable, may always go to the Collector, while the farmer or lease-holder may not proceed before this officer, or, in other words, may not enhance rents at all upon this ground unless a period of not less than ten years of his interest is unexpired—see section 95 of the draft Bill.

Proceedings in the civil courts to enhance rents

§ 69. When a landlord desires to proceed in the civil court in the first instance to enhance the rent of a ryot having a right of occupancy he must present a plaint in the usual way. If enhancement is claimed on the *first* ground, this plaint must state (1) the quantity of land held by the ryot, and when such land consists of different classes, the quantity of each class; (2) the rate of rent actually paid for such land or for each class of such land; and (3) the alleged prevailing rate which the plaintiff claims instead of the rate actually paid. When enhancement is claimed on the *second* ground, the plaint must state (1) the quantity of land for which rent was previously paid by the ryot, and, when such land consists of different classes, the quantity of each class; (2) the amount of rent paid for such land and the rate or rates at which such rent was calculated; (3) the quantity of additional land for which plaintiff claims additional rent; (4) the amount of additional rent claimed for such additional land; and (5) the total rent claimed, that is to say, the total of (2) and (4). When enhancement is claimed on the *third* ground, the plaint must contain the same particulars as (1) and (2) just specified, and must further state (3) the cause and extent of the alleged increase in the productive powers of the land; and (4) the enhanced rent or rates of rent which the plaintiff claims to receive in consequence of such increase. These particulars will, we trust, enable the court to comprehend clearly what it has to try, and the defendant in each suit to understand the case which he has to meet.

Particulars to be given in plaints

General provisions of *The Code of Civil Procedure* applicable to the trial of enhancement suits

§ 70. Plaints in enhancement cases are to be dealt with by the civil courts under the general provisions of *The Code of Civil Procedure*. The abbreviated procedure contained in Chapter XVIII of the draft Bill will have no application to such suits (section 98). In any case in which enhancement is decreed, the enhanced rent shall be payable from the commencement of the year following that in which the plaint was presented to the court. We have also provided that the civil court shall have full power to decide upon the landlord's right to enhance, and upon the fairness of the enhanced rent demanded, and may declare the landlord entitled to such enhanced rent or to *any less rent* which may be found to be fair and equitable; and *shall* decide all questions relevant to the enquiry directly raised between the parties so as to avoid, as far as possible, a multiplicity of suits. We have endeavoured to explain the intended application of this principle by some illustrations taken from decided cases. Certain recent decisions upon the subject of *res judicata* now make it more important than ever that material issues directly raised between the parties should be definitively tried, instead of its being left to doubt in subsequent litigation what the result may have been of such issues having been raised and left undecided.

Procedure before Collector applicable to three classes of

§ 71. Coming now to the details of the *enhancement procedure* provided in the Bill for the Collector, we think that there are three general classes of cases, to meet which more particularly this procedure should be directed, *viz.*,—

I.—Where the dispute is mainly about rates, and there is reason to believe that if the rates were once authoritatively settled for different classes of land, the landlord and his tenants would find no real difficulty in arranging what rent each ryot should pay according to these rates:

II.—Where the dispute is not only about rates, but also about the quantity or quality of the land held by each ryot or about both, and nothing but the preparation of a detailed *jamabandi* or rent-roll can settle all matters in controversy between the parties:

III.—Where the landlord, being a new purchaser at a revenue or execution sale, is unable to ascertain the previous rents payable by the tenants, or the exact lands held by them, or both. Here there may possibly be no enhancement, and the purchaser

may be content to collect the rents payable to his predecessor, if he can only discover for certain what those rents were.

Application for enhancement to be made to Collector of what district.

We proceed to show how the procedure which we have provided is adapted to meet the requirements of each of these three cases. Before doing so, we may remark that the landlord who applies to the Collector for enhancement is termed *the applicant*, and that the application is to be made to the Collector of the District in which are situate the lands, or any portion of the lands, to the rent of which *the applicant* is entitled. When the lands are situate in two or more districts included in the same Commissioner's division, such Commissioner, and when the lands are situate in two or more districts not included in the same Commissioner's division, the Board of Revenue, may, for any sufficient reason, direct that any such application be transferred to any other Collector within whose Collectorate any portion of the lands is situate. The first portion of this provision follows *The Code of Civil Procedure*, under which a suit for immovable property may now be instituted in any district in which any portion of such property is situate. It is expedient that the superior revenue authorities should have a power of transfer, when from considerations of convenience or for other reasons it is desirable that an application should be dealt with by the Collector of one rather than the Collector of another district.

In the first case *the applicant* will ask for a table of rates.

§ 72. In the first of the three cases put above *the applicant* will ask the Collector to prepare a *table of rates* for the estate, tenure or under-tenure, in respect of which the application is made. We have defined a "table of rates" to mean "a table or schedule which exhibits the classes of land in an estate, tenure, or under-tenure according to the classifications usual in the locality, and the rates of rent payable for each class. When enhancement is claimed on the first or second ground, such table must exhibit the prevailing rates, payable immediately before its preparation; and when enhancement is claimed on the third or fourth ground, such table shall exhibit such prevailing rates and shall further exhibit the enhanced rates allowed by the Collector upon such grounds respectively." *The applicant* is required (section 101) to file with his application a copy of the table of rates which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from the occupancy ryots; and he must further distinctly specify in his application the grounds upon which he claims to enhance rents and when these grounds came into existence. The copy of the table of rates so filed and the grounds so stated make up a complete statement of *the applicant's* case; and it is important to bear in mind that this case is concerned with the occupancy ryots *generally* of the estate, tenure, or under-tenure, and not with the *particular* circumstances of these ryots individually.

Meaning of "table of rates."

Application to include what particulars.

Classes of land, and rates of rent.

§ 73. It will be convenient to make here a few remarks about the distribution of land into different classes. We believe that such a distribution according to a more extended or more limited classification prevails in every estate; and that it is well known to, and well understood by, the ryots. The "established rate" of rent generally payable for each class is also well known; and, in the majority of instances, where no discord and no disputes have perturbed the clear waters of truth, can without much difficulty be ascertained. Our colleague, Baboo Peary Mohun Mukherji, who has had considerable practical experience in his own and his father's estates, tells us that the classification of the land is carefully made when a village is measured, and that all disputes as to the class in which any particular plot of land should be placed are then settled with the aid of the village mandals. He says that every landlord who has any pretensions to good management is careful to have his estate measured: and that the measurement papers *(chita)* then furnish him with a record not only of the areas of the ryots' holdings, but also of the quantities of each class of land included in each holding. He furnishes us with the following specimen classification:—

Example of classification of land.

	Per bigha. Rs.
I.—Soona land, awul or first class at	5
Ditto duim or second class at	4
Ditto seyam or third class at	3

Soona land is the higher and better land not liable to inundation and produces *aus* paddy, pulses of kinds, potatoes, sugarcane and indigo

	Per bigha. Rs	As
II.—Sali land, awul or first class at	4	0
Ditto duim or second class at	3	0
Ditto seyam or third class at	2	8
Ditto chaharam or fourth class at	1	8

Sali land produces amun paddy, sesame, múg and jute.

III.—Danga or high arable land at Rs. 6 per bigha, produces sugarcane, potatoes, brinjals and indigo.

IV.—Land on which bamboos are produced, at Rs. 5 per bigha.

V.—Land on which fruit trees and vegetables are grown, bagat, at Rs. 5 to Rs. 8 per bigha.

VI.—Land on which mulberries are grown, at Rs. 6 per bigha.

VII.—Land on which betel leaves are grown, at Rs. 15 per bigha.

VIII.—Bastu or homestead land, at Rs. 10 per bigha.

IX.—Udbastu or land adjoining the bastu land, at Rs. 7-8 per bigha.

X.—Doba or small hollows, where fish are caught in the rains, at Rs. 2 per bigha.

XI.—Ghaskar or pasturage, at Re. 1 per bigha.

This classification gives us eleven different classes of land, two of which again contain seven sub-classes.

Publication of applicant's table of rates with notice to agree or state objections within one month.

§ 74. *The applicant* having stated his case, the next step is for the Collector to ascertain what the ryots have got to say in reply to it. To this end he has a copy of *the applicant's* table of rates posted up at the *mal kachahri* of each village to which the lands belong, or at some conspicuous place in such village, or upon such lands, and also has it proclaimed by beat of drum that such copy has been so posted up, together with a notice calling upon the ryots to appear within one month and agree to the rates specified in such copy or state their objections, if any, thereto. If all the ryots accept the rates, the Collector will record the fact and there is an end of the matter. If, on the contrary, the ryots or any of them object to the rates, it will be the duty of the Collector to proceed to prepare a table of those rates which he finds to be fair and equitable. He will duly consider the case set up by *the applicant* and the objections made by the ryots, and will take such evidence and make such inquiries as he may find necessary; and, having done this, he will draw up a statement of his proceedings, and will therein state the grounds upon which he allows or disallows the rates claimed by *the applicant* or any of them, or allows lower rates in substitution therefor.

Proceedings when ryots appear and assent or object.

Nature of the proceedings when enhancement is claimed on the *first* ground.

§ 75. If enhancement is claimed on the *first* ground, namely, that the ryots are paying a rate of rent below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, the Collector will ascertain the prevailing rates payable in the vicinity for classes of land similar to those in the estate, tenure or under-tenure with which his proceedings are concerned. He will confine himself to this general point. If any particular ryot contends that he does not belong to the same class of ryots, or that his land has not similar advantages to the class of lands, respectively, which are selected from the vicinity for comparison, the Collector will decline to enter upon these individual questions. If upon the publication of the table of rates *the applicant* and the ryots are unable to settle matters between themselves, *the applicant* will have two courses open to him as will be shown hereafter. He can proceed in the civil court to enforce the table of rates against the ryots individually, or he can ask the Collector to prepare a *jamabandi*. In either of these proceedings the ryots will have a full opportunity of stating their individual cases, and having them duly considered. Similarly, if enhancement is claimed on the *second* ground, namely, that the quantity of land held by the ryots has been shown by measurement to be greater than the quantity for which rent has been previously paid, the Collector will ascertain and declare the prevailing rates payable for each class of land, but he will not determine how much excess land is in the possession of any particular ryot, or to what class such excess land belongs. These are questions to be settled when *the applicant* proceeds further to enforce the table of rates against the ryots individually.

Or on the *second* ground.

§ 76. If enhancement is claimed on the *third* ground, namely, that the productive powers of the lands held by the ryots have increased otherwise than by the agency or at the expense of such ryots, the Collector will have to ascertain the extent of the increase with reference to the terms of the law. Having ascertained this, he must then determine what rates are fair and equitable for these improved lands instead of the old rates. Taking, for example, the Soona land according to the classification given above in § 73, if he finds that the productive powers of the land have been increased fifty per cent., the new rate— Nature of the proceedings when enhancement is claimed on the *third* ground.

	Rs.	Rs.	Rs.	
for improved first class Soona will be . . .	5	+ 2½	=7½	per bigha.
„ improved second class Soona will be . .	4	+ 2	=6	„
„ improved third class Soona will be . .	3	+ 1½	=4½	„

If any particuliar ryot contends that this land, owing to its exceptional situation or other cause, has not been benefited to the same extent as other land, the Collector will not enter into this question, which must be left for determination in the proceedings taken to enforce the table of rates against the ryots individually. Finally, if enhancement is claimed on the *fourth* ground, namely, that the prices of produce have increased otherwise than by the agency or at the expense of the ryot, the Collector must ascertain the extent of the increase with reference to the terms of the law, and, dividing such increase according to the provisions of the Act, must determine the new rates, which shall be fair and equitable. Taking, for example, the Sali land according to the classification given above in § 73, if prices have doubled, and if the increase has occurred without the agency or expense of either the landlord or the ryot, the increment is to be divided equally, and the landlord will get half of it. The new rate will therefore be— When enhancement is claimed on the *fourth* ground.

	Rs.	As.	Rs.	As.	Rs.	As.	
for first class Sali	4	0	+ 2	0	= 6	0	per bigha.
„ second „	3	0	+ 1	8	= 4	8	„
„ third „	2	8	+ 1	4	= 3	12	„
„ fourth „	1	8	+ 0	12	= 2	4	„

§ 77. The Collector having prepared the table of rates will publish it with a notice intimating to *the applicant* and the ryots that any objections which he or they desire to make to the rates must be made within one month by a written petition presented to the Collector. If any such objections are made, the Collector will consider them and amend the table, if he see fit. He will then submit the table of rates with his proceedings and any petitions of objection that may have been presented to the Commissioner, or, through the Commissioner, to the Board of Revenue. The Lieutenant-Governor may from time to time direct what cases shall be finally revised by the Commissioner or the Board, regard being had to the total amount of rents involved, or to the area of the lands or the number of the ryots affected. The Board or the Commissioner, as the case may be, may direct and await further proceedings or inquiries, may hear any person affected by the proceedings, may allow or reject any of the objections made, and may revise, amend or alter the table of rates (section 104). Table of rates when prepared to be published with notice that objections may be made within one month. Collector's proceedings to be submitted to superior revenue authorities, who have full power to revise, amend or alter.

§ 78. The table of rates, as finally sanctioned by the Board or the Commissioner, will be binding upon *the applicant* and the ryots, and will be conclusive to this extent that the rates therein specified are the fair and equitable rates payable for the classes of land specified in such table by ryots having a right of occupancy. *The applicant* will not, however, be able to recover rent from any individual ryot according to the rates specified in the table until it has been proved in a further proceeding, or the ryot has admitted that the lands held by him are lands of the same classes as those shown in the table. It has been asserted by persons of experience and ability that if rates were once settled by authority, landlords and tenants would soon be able to adjust their differences. If there is anything in this assertion, as soon as the table of rates is authoritatively promulgated, *the applicant* will be able to settle with the majority of the ryots, whose lands will in all probability fall within the classification of the table, and who will, therefore, have nothing to hope from a continuation of the contest. The residue will either have or conceive them- Table of rates how to be used for settlement of rents. Probability that it will enable the landlord and his tenants to come to terms amongst themselves

selves to have just reasons for refusing to pay rent according to the table of rates. One may contend that he belongs to an old family or superior caste, who have always held their lands at a more favourable rate than the other ryots less (say) by two annas or four annas in the rupee. Another may allege that his grandfather or great-grandfather was in the service of the zemindar, and obtained his holding at lower rates with a promise that a difference should always be made in his favour. These allegations may be supported by the fact that the persons making them have been holding at lower rates than their neighbours. A *third* may aver that, owing to peculiarities of situation, his land has always been recognized as forming a sort of middle class not shown in the table, paying more than second class Sali, but less than first class Sali. A *fourth* may set up the plea that his fields lie on the edge of the *mát* or plain, and are liable to damage by cattle, in consequence of which he has always paid something less than the regular rate of the class to which these fields belong. A *fifth* may contend that the enhancement being claimed on the *third* ground, he was let into possession a couple of years ago, after the cause of the increase of the productive powers had produced its results, that he paid a large *salámi* or fine in consideration of getting good land at a low rent, and that in justice and equity he cannot be bound by the table of rates. A *sixth* may raise a similar objection when enhancement is claimed on the fourth ground. Where these averments are just and reasonable, a prudent landlord will make a timely concession, and by agreeing to something less than the published rates will satisfy those ryots who have a claim to exceptional consideration; and thus *the applicant* may be enabled by the publication of the table of rates to come to terms with all his ryots.

If parties fail to come to terms, two courses open to the landlord.

§ 79. If, however, the ryots make unreasonable objections on the one hand, or the landlord will not yield to reasonable claims on the other hand, there are two courses open for the settlement of these individual grounds of dispute (section 106). *The applicant* may proceed in the civil court to enforce the table of rates against his ryots, and any number of ryots not exceeding ten may be made co-defendants in any such suit. The table of rates will be here conclusive to the extent already pointed out, but it will place the landlord in no better position as regards the burden of proof in other matters than if he had not gone to the Collector, but had in the first instance resorted to the civil court. Each individual ryot will thus have a full opportunity of bringing forward his own case and of procuring the decision of the court thereupon. The other course open to *the applicant* is to apply to the Collector for the preparation of an enhanced *jamabandi*, and this he may do at any time after three months (this affords time for an amicable settlement) and within one year from the date of the table of rates being finally sanctioned. From the exposition of the proceedings in preparing an enhanced *jamabandi* which follows, it will appear that here also the ryots will have a full opportunity of having their individual pleas heard and decided.

Application for an enhanced jamabandi in what cases.

§ 80. *The applicant* may ask the Collector to prepare an enhanced *jamabandi* of the estate, tenure, or under-tenure in respect of which the application is made, (1) by his original application, or (2) by a supplementary application after he has obtained a table of rates and has failed to settle with some or all of his ryots.

Meaning of a "jamabandi".

We have defined (section 100) a "jamabandi" to mean a table or schedule, which exhibits—

(1) the names of the ryots in an estate, tenure, or under-tenure;
(2) the quantity of land, or, where such land consists of different classes, the quantity of each class, held by each ryot;
(3) the total rent payable by each ryot for the total land of each class held by such ryot; and
(4) the grand total of rent payable by each ryot.

Meaning of "enhanced jamabandi".

We have defined an "enhanced jamabandi" to be a jamabandi which, in addition to the above particulars, further exhibits—

(*a*) when enhancement is allowed on the *first* ground,
(5) the prevailing rate of rent allowed for any class of lands instead of the rate previously payable;
(6) the new total rent payable, in consequence, for all the land of such class held by each royt, and
(7) the new grand total of rent payable by each ryot:

(*b*) when enhancement is allowed on the *second* ground,
  (5) the additional land of each class proved to be in the possession of each ryot;
  (6) the new total rent payable, in consequence, for all the land of such class held by each ryot; and
  (7) the new grand total of rent payable by each ryot:
(*c*) when enhancement is allowed on the *third* or *fourth* ground,
  (5) the enhanced rate of rent allowed for each class of land;
  (6) the new total rent payable, in consequence, for all the land of such class held by each ryot; and
  (7) the new grand total of rent payable by each ryot.

It will be obvious at a glance that a jamabandi or enhanced jamabandi, unlike a table of rates, deals with the particulars connected with each individual ryot.

Application for an enhanced jamabandi what to include.

§ 81. *The applicant* who asks for an enhanced jamabandi must with his application present a copy of the enhanced jamabandi, which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from the ryots; and he must further distinctly specify the ground or grounds upon which he claims to enhance the rent of each ryot specified therein. The entry of any ryot's name in this copy will be an admission by the landlord that such ryot has a right of occupancy. The enhanced jamabandi presented by *the applicant* will be published in the same manner as the table of rates (*ante* § 77) on the land, with a notice to the ryots to appear within one month and assent individually to the entries concerning each of them, or state their objections, if any, to such entries. Any ryot may here put forward by way of objection everything connected with his own particular case.

Enhanced jamabandi to be published with notice to ryots to appear and assent or object to the entries concerning them.

Procedure if all the ryots assent

§ 82. If all the ryots concerned agree to all the entries in the copy of the enhanced jamabandi presented by *the applicant*, the Collector shall make an order declaring such jamabandi to be binding upon *the applicant* and the ryots for ten years, subject, however, to enhancement for alluvion and abatement for diluvion. If any or all the ryots object, or if they do not appear and assent, the Collector will proceed to prepare an enhanced jamabandi for the estate, tenure, or under-tenure. In order to do this he must first obtain the information necessary to prepare a table of rates in those cases in which such a table has not been already prepared, and he must then apply these enhanced rates to the cases of particular ryots, dealing with the peculiar circumstances of each case, and the objections, if any, made by each ryot.

Procedure if all or any of the ryots object

Collector to draw up a statement of his proceedings Enhanced jamabandi when prepared to be published.

§ 83. When the Collector has concluded these proceedings he will draw up a statement thereof and prepare the enhanced jamabandi (section 109), which will then be published with a notice intimating to *the applicant* and the ryots that any objections which he or they may desire to make to the rates or entries in such enhanced jamabandi must be made within one month after such publication by a written petition to be presented to the Collector. If any objections are made—and it may be observed that these objections may be on all points connected with each ryot's individual case—the Collector is to deal with them. In order to satisfy himself of the correctness of such objections or otherwise, the Collector may take such further proceedings as appear necessary, and may therein exercise the same powers as he was competent to exercise in the original proceedings; and he may make any order which he deems proper either cancelling, amending, or otherwise altering any such rate or any such entry, or rejecting such objection. Any landlord or ryot affected by such order may, if dissatisfied therewith, prefer an appeal to the Commissioner within thirty days, and the Commissioner may upon such appeal, after or without further inquiry, make such order as to him appears proper (section 110). The enhanced jamabandi finally prepared after all the objections are disposed of will be binding on the landlord and the tenants for ten years, subject to enhancement for alluvion and abatement for diluvion. In order to prevent ryots who pay their rents to *the applicant* according to the enhanced jamabandi from being harrassed by suits brought by rival landlords, we have enacted (section 111) that no ryot who is compelled to pay rent to *the applicant* according to the enhanced jamabandi shall be liable in a suit for mesne profits to any third party claiming to be entitled to such rent, but any such suit shall be maintainable against *the applicant* alone.

Collector to deal with objections made by individual ryots.

Appeal to Commissioner.

Protection of ryots who pay rent to the applicant under the enhanced jamabandi.

Proceedings to obtain a settlement jamabandi

§ 84. We now come to the third class of proceedings, namely, proceedings to obtain a settlement jamabandi, which we have defined to be a jamabandi prepared by the Collector upon the application of a landlord who is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable by each of such ryots. We have already (*ante* § 65) alluded to the difficulties under which a purchaser at a public sale labours when he endeavours to take possession of an estate which he has purchased. The former owner intrigues with the ryots to put obstacles in his way. Either the object of the purchaser is to make a profit by enhancing the rents, or this object is imputed to him. The old proprietor withholds all information and all papers. The ryots understate their rents and produce fabricated receipts purchased from former gomashtas, or perhaps even signed by the old proprietor in the hope that the purchaser will repent his bargain and make overtures to get rid of it. The quantity of land in each holding is untruly stated, or all information is refused. If the purchaser attempts a measurement, no one will say to whom the plots or fields belong. Individual suits cannot be brought, for the purchaser has not sufficient information to draft a plaint in a single case. All this may happen, not only when the new landlord is a purchaser at a revenue sale or at an execution sale, but also in the case of a succession, when some person, who undoubtedly has the law on his side, is opposed by the female or other members of the family of the late owner, who conceive that they have rights which ought to be respected.

Cases to which this procedure is applicable.

Applicant for settlement jamabandi to set forth the circumstances in his application

§ 85. *The applicant* who, under this state of things, applies to the Collector for a settlement jamabandi must in his application set forth the circumstances under which he is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable. The Collector, if satisfied that *the applicant* is really unable to ascertain these particulars, and that, in consequence, proceedings for the preparation of a table of rates or an enhanced jamabandi could not be inaugurated or would be useless, may proceed to prepare a settlement jamabandi. The first step towards doing this is the issue of a notice calling upon the ryots in the estate, tenure or under-tenure to appear within one month and state the plots of land held by each of them, together with the class, quantity, and boundaries thereof, the rent previously paid for such land, and the rent which they are each of them willing to pay.

If ryots do not furnish required particulars or if applicant object to particulars furnished, Collector to proceed to ascertain and determine what matters

§ 86. If within one month after the publication of this notice the ryots appear and give the particulars required of them, and *the applicant* assents to these particulars, the settlement jamabandi will be drawn up accordingly. If they do not appear and furnish the particulars required of them, or if they furnish particulars which *the applicant* objects to, the Collector will proceed to ascertain and determine (1) who are the ryots liable to pay rent to *the applicant*; (2) what are the lands for which such rents are payable; (3) what rights such ryots have in such lands; and (4) what are the rents or rates of rent, either in excess of the former rents or rates or otherwise, which *the applicant* is entitled to receive from such ryots for such lands (section 113). When the settlement jamabandi is completed, the Collector will publish it in the same way as an enhanced jamabandi, with a similar notice to the ryots concerned. The Collector will deal with any objections that may be made by individuals, and, if dissatisfied with his orders, they can appeal to the Commissioner.

Any number of landlords may join in an application. Collector may direct separate proceedings if he see fit.

§ 87. Having thus explained the main features of the proceedings before the Collector in the three classes of cases for which we have attempted to legislate, we shall now notice certain general provisions common to all three. And, first, we have allowed any number of landlords to join in an *application*, specifying the proportions in which they are willing to pay the costs; but the Collector may, if he see fit, direct that separate proceedings be held in respect of any estate, tenure, or under-tenure, or specific area belonging to any *applicant* (section 115). As to the considerations which should guide the Collector in making such an order, the causes which afford grounds of enhancement sometimes affect considerable areas with scarcely any perceptible difference in their effects. This is notably so in the case of a rise in prices. Economy in the employment of the necessary agency and in making the necessary inquiries will be effected by including in a single investigation a number of landlords and tenants who have the same stake in the questions to be settled. In pre-

Considerations which should guide the exercise of this discretion.

paring a table of rates, where the particulars of individual cases have not to be inquired into, a larger number of persons can safely be included in the proceedings than in preparing an enhanced jamabandi or a settlement jamabandi, where the particulars of individual cases have to be dealt with. Two or more under-tenures within the same tenure, or two or more tenures within the same estate, may well form the subject of a single investigation; while tenures situate within different and distant estates, and affected by different circumstances, ought to be treated separately. The great object in every case should be not to make the inquiry too unwieldy, and not to attempt to treat together areas which are not susceptible of similar treatment.

Collector may, if he see fit, endeavour to bring about an amicable compromise.

§ 88. We have provided (section 116) that in any case in which an application is made to him, the Collector may, if he see fit, before proceeding to determine or settle the matters in dispute, endeavour to bring about an amicable compromise between *the applicant* and the ryots; and that, if any such compromise is brought about, the Collector shall draw up a formal record of its terms, and such record shall be binding upon all persons mentioned therein. We have borrowed these provisions from the expired *Agrarian Disputes Act* VI (B. C.) of 1876.

Deposit of money upon the requisition of the Collector to meet the expenses of the proceedings.

Consequence of failure to deposit.

§ 89. We have provided that *the applicant* shall from time to time, when so required by a written notice, deposit such sum of money as the Collector may estimate to be necessary to carry on the proceedings. When there is a single *applicant*, and he fails to comply with such a requisition within fifteen days after its being made, the Collector may order the proceedings to abate, or he may in his discretion receive the deposit after the fifteen days have expired. Where there are more *applicants* than one who have joined in respect of different estates, tenures or under-tenures, the Collector may receive so much of the amount as is required for any particular estate, tenure or under-tenure, and proceed with the inquiry so far as it is concerned, making an order of abatement as to the other or others in respect of which no deposit has been made. When the *applicants* are coparceners, one may deposit the whole amount required, and recover from any other coparcener the share which should have been deposited by him. When an order has been made that the proceedings do abate, no fresh enhancement proceedings may be instituted for ten years (section 118).

Powers exercisable by a Collector for obtaining evidence in the course of his proceedings.

§ 90. We have enacted (section 121) that the Collector may in his discretion, at any stage of his proceedings, exercise all or any of the powers of a civil court in respect of summoning, causing the attendance of, and examining witnesses, whether parties to the proceedings or not, and in respect of causing the production of documents, and giving or apportioning costs; and the provisions of *The Code of Civil Procedure* applicable to these matters shall apply to a Collector exercising such powers. We have also provided that a Collector may, with the consent of the parties, refer any matter to arbitration, and that the provisions of *The Code of Civil Procedure* concerned with arbitration shall be applicable.

Reference to arbitration.

Annual price lists to be prepared by Collectors of districts and published in the *Calcutta Gazette*.

§ 91. In order to facilitate inquiries into the increase or decrease of prices as a ground of enhancement or abatement of rent, we have provided (section 122) that the Collector of every district shall prepare annual lists of the prices at harvest time of the staple crops appointed by the Board of Revenue for districts or other areas (see clause (*c*) of section 23). These price lists will be prepared under rules made by the Board in order to secure uniformity, and will be published annually in the *Calcutta Gazette*. We have declared that any price list so published shall be relevant in any proceedings under Chapter XV, and shall be *primâ facie* evidence of the price of such staple crops during the year, and in the district or area for which it has been published. The areas for which these lists will be drawn up will be determined by the Board of Revenue upon the recommendation of the Collector. The prices at certain fixed marts should be taken, the same marts being always adhered to. The price of produce in the field where it is grown varies according to the distance of the usual market and the necessary cost of carriage thereto. The price in different markets varies according to their proximity to larger markets or ports of export, and the facilities for carriage to such ports or market. By taking always the prices of the same markets, the normal variation, as affected by external and general, as distinguished from local and particular, causes, is more likely to be obtained.

To be *primâ facie* evidence in enhancement proceedings.

Power of Collector to make measurement and direct the ryots to be present

§ 92. We have provided (section 123) that the Collector may in his discretion, at any stage of the proceedings, make a measurement of all or any of the lands with which such proceedings are concerned, and may make an order, which shall be duly published, directing the ryots to be present at such measurement. Any ryot who, after the publication of such order, fails to attend and point out his land, shall be estopped from contesting the correctness of the measurement made or any of the proceedings held in his absence.

Consequence of non attendance

If after due inquiry the Collector is unable to make a measurement or ascertain the names of the ryots or other persons holding the lands, he may declare such lands to be at the absolute disposal of the zemindar. If any ryot appears within fifteen days after the Collector has recorded such a declaration and shows reasonable cause for his previous non-appearance, the Collector may, upon such terms and conditions as to him appear proper, alter or rescind his previous declaration. If no such reasonable cause is shown, the Collector may make an order, refusing to alter or rescind such declaration, and from such order an appeal will lie to the Commissioner. These provisions will be found useful and necessary in the third class of proceedings, namely, those held for the preparation of a settlement jamabandi. It is to be observed that they are not new, similar provisions having been enacted by Act VI (B. C) of 1862, and being still found in Act VIII (B. C.) of 1869.

Any person may be invested with powers of a Collector for the purposes of the Act. Deputy Collector may exercise powers subject to control of Collector

§ 93. We have provided (section 124) that the Lieutenant-Governor may invest any person with the powers of a Collector for the purposes of Chapter XV, and may give such directions as appear convenient for dividing between such person and the Collector of the district the work arising under the Act; and that any Deputy Collector may, subject to the control and supervision of the Collector of the district, or of any person so invested with the powers of a Collector, exercise (with some few exceptions) all or any of the powers vested in a Collector by Chapter XV. The Collector is empowered to exercise this control and supervision either of his own motion or upon petition by any one alleging himself to be aggrieved. We have provided that the Collector may, subject to rules to be made by the Board of Revenue, appoint such ministerial and other officers as may be required to make such inquiries, and to do all such things as may be necessary to carry out the provisions of the Act.

Appointment of ministerial officers, &c

Rules as to the cost of the proceedings

§ 94. Upon the termination of the proceedings the Collector will draw up an account of the total cost. If the amount deposited by *the applicant* covers this cost and leaves a balance, such balance will be refunded. If there is a deficiency, it will be recoverable as a public demand. In the cost of the proceedings will be included (*a*) the salary and allowances of the Collector or Deputy Collector by whom the proceedings have been conducted; (*b*) the salaries of the ministerial officers; and (*c*) all contingent and other expenses actually incurred. A discretion is given to Commissioners and Collectors to direct, when rejecting an objection or appeal, that the immediate costs thereof be paid by the person making such objection or appeal, or by any party who opposes the same. When *the applicant* in proceedings for an enhanced jamabandi is found entitled to enhanced rent, the Collector may award to him costs payable by the ryots; but no ryot shall be liable to pay as costs a greater sum than one year's enhanced rent, and such costs may be made payable by instalments. Unpaid costs are recoverable as arrears of rent (section 128).

Certified copies

Every person affected by the proceedings is declared to be entitled to a certified copy of the Collector's statement, and of any table of rates, enhanced jamabandi, or settlement jamabandi prepared by the Collector, such copy to be made at his expense. A ryot is entitled to receive a certified copy of so much of any jamabandi as concerns himself upon payment of a fee of four annas which will cover all charges.

Transfer of cases instituted in large numbers, by Civil Court to Collector

§ 95. We have provided (section 130) that when any considerable number of cases has been instituted in a civil court by one or more landlords against ryots holding land in the same locality, and it appears to such court desirable that all such cases should be disposed of by the Collector, the civil court may make a recommendation to this effect to the District Judge to which such court is subordinate, and the District Judge may, if he see fit, transfer such cases to the Collector, who shall proceed thereupon as if an application had been made to him in the first instance. The object of this provision is to secure economy of judicial power, when landlords, instead of applying to the

Collector, bring a number of separate suits against individual ryots, and also to obtain the advantages of a general inquiry into matters in which a number of persons are interested.

Power of Collector to act on suits for settlement of rents.

§ 96. As a substitute for the expired *Agrarian Disputes Act*, 1876, we have enacted (section 131) that if the Collector of a district is of opinion that, in consequence of a serious dispute likely to lead to a breach of the peace having arisen upon the subject of rent in a considerable area of his district, it is expedient that proceedings should be taken to settle the rents payable by the ryots to their landlords within such area, he may record his reasons for entertaining this opinion, and may forward them, through the Commissioner, for the consideration of the Lieutenant-Governor. The Lieutenant-Governor, if satisfied of the expediency of taking such proceedings, may authorize such Collector to proceed of his own motion to settle such rents, and the Collector shall then proceed as if an application has been made to him by the persons concerned.

Alternative courses, if the introduction of the previous scheme in its entirety be thought likely to involve too great and sudden an increase of revenue agency.

§ 97. Such is the procedure which we have devised for the enhancement and settlement of rents. According to its provisions the Collector is bound to take action upon an application presented to him. It is very probable that if these provisions become law additional agency will be required in the Revenue Department. How far this requirement can be met by reduction in the department of the civil courts rendered possible by diminished pressure in that quarter, it is not easy to anticipate, and is not probably within the sphere of our duties to forecast. We think, however, it will be well to mention what alternative courses we consider possible, if it be thought undesirable to give immediate effect to the scheme in its present shape and in its present entirety. *First*, the provisions of the Enhancement Chapter (XV) might be not brought into general operation at once, but might be made extendible to any particular district by a notification to be published in the Gazette. *Secondly*, the preparation of a table of rates only might be made compulsory upon the Collector, the application of this table to individual cases being imposed upon the civil courts. *Thirdly*, the Collector's agency might be called in only when the District Judge certified to its being desirable in consequence of a considerable number of cases being instituted from any portion of the district. *Fourthly*, landlords might be restricted from using the revenue courts for less than a particular and considerable number of cases.

Cases for enhancement of the rent of tenures and under-tenures to be instituted in the civil courts.

§ 98. We have provided (section 132) that cases for the enhancement of the rent of tenures and under-tenures shall be instituted and conducted in the civil courts, and that all the provisions of *The Code of Civil Procedure* shall be applicable to them. The plaint here also must, in order to effect the rent of the following year, be presented at least four months before the expiry of the year. The court has full power to decide all questions arising between the parties, and may declare the landlord entitled to the enhanced rent claimed, or any less rent that may be found fair and equitable.

Occupancy ryot entitled to abatement of rent on what grounds.

§ 99. We have provided that, subject to those provisions which make a table of rates or an enhanced jamabandi binding for ten years, a ryot having a right of occupancy is entitled, on any one or more of the following grounds, to an abatement of the rent payable by him in money, namely,—

(1) on the ground that the quantity of land held by such ryot has been shown by measurement to be less than the quantity for which rent has been previously paid by him;

(2) on the ground that the productive powers of the land held by such ryot, as compared with such powers at the time when the rent was fixed, or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual;

(3) on the ground that the prices of produce in the locality or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual.

The above three grounds are the converse of the second, third and fourth grounds of enhancement. The first ground of enhancement finds no such converse, and we have here retained the existing law under which an occupancy ryot is not entitled to claim an abatement of the rent previously paid by him on the ground that such rent is higher than the prevailing rate paid by ryots of the

same class for land of a similar description and with similar advantages in the places adjacent.

Suits for abatement of rent by occupancy ryots in what court to be instituted;

§ 100. A suit for abatement of rent by an occupancy ryot may be instituted (1) when abatement is claimed on the first or second of the grounds stated in the last paragraph in the civil court or before the Collector; (2) when abatement is claimed on the third of these grounds, before the Collector only. But no such suit can be instituted before the Collector unless ten ryots at least join in bringing it: and we have declared that ten or more ryots paying rent to the same landlord may join in bringing any such rent, even although their holdings are separate and distinct. Suits for abatement of rent on account of diluvion or other cause brought by tenure-holders or under-tenure holders must, when maintainable, be instituted in the civil court, and the provisions of *The Code of Civil Procedure* are applicable thereto.

by tenure-holders or under-tenure-holders where to be instituted.

Ryots who have held land for three or more but less than twelve years Chapter IV. the result of a compromise

§ 101. Chapter IV treats of ryots who have held land for three or more but less than twelve years. This Chapter is the result of a compromise between different views entertained by members of the Commission. Messrs. Mackenzie[1] and O'Kinealy are in favour of reducing from twelve to three years the period necessary to acquire a right of occupancy. Messrs. Dampier and Field would in this respect make no change in the law of 1859, believing that the number of persons likely to be benefited is not so large, or the amount of benefit likely to be conferred so great, as to compensate for the unsettling of present ideas, the disturbance of existing rights, and the consequent litigation that would probably be the result of such a new provision. In the view that there is no necessity for any change in the direction indicated, the two last mentioned members of the Commission would prefer to have Chapter IV struck out of the Bill altogether. We proceed to notice the provisions of the Chapter.

Three years' ryots protected from eviction, except in certain cases

§ 102. It is provided (section 26) that a ryot who, for a continuous period of three or more, but less than twelve, years has as a tenant occupied and cultivated, or has as a tenant held, land other than *khamar*, *nijjote*, or *sir* land let on lease for a term or year by year, shall not be evicted from such land by the landlord thereof otherwise than (*a*) for non-payment of rent, or (*b*) for a breach of some condition of his lease which expressly provides that eviction shall be the penalty of such breach, or (*c*) for refusal to pay an increased rent demanded by his landlord. A demand for increased rent is not limited by any of the provisions of the Bill, but notice of such demand must be given to the ryot at least three months before the end of the year. If the ryot after receipt of such notice elects to continue in possession of the land, he will be liable for the higher rent demanded. If he is unwilling to keep the land at the higher rent demanded, he can give his landlord notice of his intention to relinquish it, and he will be entitled to receive as compensation for disturbance one year's rent at the higher rate demanded by the landlord. If the landlord fails to pay

Demand of enhanced rent.

Such ryot, declining to keep land at higher rate demanded, entitled to compensation for disturbance.

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[1] Mr. Mackenzie's views are thus stated in the following paragraphs of a Note dated 20th January 1880 submitted by him to the Commission, and which will be found in our proceedings:

"I have already shown that the framers of Act X considered that *every resident ryot* had a right of occupancy, and that it was not intended to injure his position in any way. I have urged that his position has been injured by the 12-years' clause of that Act, and in this opinion I have the support of the majority of revenue officers throughout Bengal. It is no sufficient remedy to say that the new Bill will not infringe on any term of prescription recognized by local custom. We want an easy means of determining when a ryot may or may not be arbitrarily ejected. If it is impossible now-a-days to say that no 'resident' ryot shall be so ejected, because village residence and village and tillage do not now run together, then I say take the spirit of the old law and protect *every* ryot who gives reasonable proof of his intention to cultivate permanently the lands on which he is settled. Three years' tillage seems to afford such reasonable proof. This was the term proposed in the original draft of Act X as conferring rights of occupancy on resident ryots in lands not previously in their occupancy and for which they had no pottah."

"I cannot admit the force of Mr. Field's objections to this. I do not see that such a provision would lead to litigation. On the contrary it would prevent the litigation sure to arise if Mr. Field's proposal to leave everything to local custom is adopted. It would go far to do away with the erroneous idea that by occupying for 12 years a man is entitled to be charged a lower rent than his neighbour for the same class of land. It does not limit injuriously the zemindars' rights, for it simplifies their relations with their ryots and puts the question of enhancement upon a uniform basis for the great mass of the ryots without distinction of class. It is desirable on political grounds, for it recognizes the title of the great body of the cultivators to the quiet possession of their fields. In so doing, and taken in connection with the proposal that the State should directly regulate enhancement, it widens the basis of agricultural prosperity, diminishes risks from famine, and tends to create a substantial tenant right without detracting from the value of that property which the zemindars have by prescription (though to a great extent in the teeth of law and justice) acquired, and of which it would now be folly to attempt to deprive them."

Mr Mackenzie is not in favour of Chapter IV, if every cultivator, who has practically shown himself to be a settled or resident cultivator by three years' occupation is protected against arbitrary ejectment so long as he pays the established rates of the neighbourhood for occupancy ryots.

Mr. Field's views are embodied in his Note of the 13th January 1880, which will also be found with the proceedings.

such compensation within the first month of the ensuing year, the ryot shall be entitled to hold on at the old rent.

Such ryot, if evicted on any of the above three grounds, also entitled to compensation for improvements.

§ 103. Any such ryot who is evicted on any of the three grounds above-mentioned, is also declared to be entitled to receive compensation for any improvements made by him upon the land at any time while he cultivated or held it. We have defined the term "improvements" to mean works by which the cultivation of land has been lastingly facilitated, or the productive powers of land have been lastingly increased, and to include—

(*a*) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot;

(*b*) the making of tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes;

(*c*) works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water;

(*d*) the reclaiming, clearing, or enclosing of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto;

(*f*) the planting of fruit trees.

Civil court may assess compensation for improvements, if parties cannot agree.

§ 104. The landlord and tenant may agree on the amount and mode and time of payment of this compensation for improvements. If they cannot agree the civil court may determine the amount, and in so doing shall take into consideration the following principles:—

(*a*) The amount of the ryot's compensation in respect of an improvement shall be the sum laid out by the ryot on the improvement with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy, in which the outlay is made, and while the improvement continues unexhausted.

(*b*) In determining the amount of compensation in respect of an improvement, there shall be taken into account in reduction thereof any sum reasonably necessary to put the same into good repair or condition.

(*c*) Any deterioration of the holding caused by the act of the ryot shall be taken into account.

Decree to be made for amount of compensation.

The civil court, having determined the compensation, shall make a decree for the amount. If such amount does not exceed fifty rupees, the decree will be final and conclusive (section 30).[1]

Three years' ryot may claim abatement of rent, and, if landlord refuse, may relinquish land and claim compensation.

§ 105. We have provided (section 31) that a ryot of the class now under notice may claim abatement of the rent payable by him in money on any of the grounds on which an occupancy ryot may claim abatement; and that, if the landlord is unwilling to allow the abatement to which ryot is found to be entitled, the latter may relinquish the land and claim compensation, the measure of which shall be one year's rent at the rate from which the landlord declined to allow an abatement.

Ryots who have held land for less than three years.

§ 106. Chapter V treats of ryots who have held land for less than three years, and to these it is not proposed to give any special privilege or protection. They hold at the will of the landlord, but they may not be evicted otherwise than through the court and upon a reasonable notice. No such ryot may sue for determination of the rent which he is to pay in future, or for abatement of rent: this follows the decisions, and is the natural result of his position as a tenant-at-will. A landlord desiring to eject any such ryot must serve him, through the civil court, with a notice to quit at least three months before the expiry of the year preceding that in which he desires to resume possession of the land. If the ryot does not give up the land from the first day of the year next ensuing after service of notice, the landlord may within three months bring a suit to evict him; and, when such a suit has been instituted, the time during which the ryot continues to hold on cannot be added to previous time, so as to give the ryot the advantage of the improved position conferred by the Act on ryots,

Eviction of such ryots.

Ryot let into possession for a fixed term of less than three years, and holding over without permission.

[1] In drafting these provisions as to compensation, we have utilized *The Oudh Rent Act* XIX of 1868, sections 22-26: *The North-Western Provinces Rent Act* XVIII of 1873, sections 44-47; *The Landlord and Tenant (Ireland) Act*, 1870, 33 and 34 Vic., Cap. 46, sections 3-14; and *The Agricultural Holdings (England) Act*, 1875, 38 and 39 Vic., Cap. 92.

who have held for more than three years. If a decree for ejectment is ultimately passed against the ryot, he is further made liable for the full letting value of the land for the time during which he has wrongfully retained possession, and for any damages sustained by the landlord in consequence of being kept out of possession of the land (section 34). We have made the same provisions applicable to a ryot, who having been let into possession for a term less than three years refuses to give up the land upon the expiry of such term, and has not the consent, express or implied, of his landlord to hold over. We trust that these express provisions upon points as to which the present statute-law is silent, and for which the decisions have not provided a sufficient guide in the case of ryots not having a right of occupancy, will be found equitable and calculated to prevent litigation in future.

Three years' ryot not liable to enhancement without notice, unless he has made a written agreement to pay higher rent.

§ 107. In order to settle another point which has occasioned some difficulty in the case of ryots not having a right of occupancy, we have provided (section 35) that a ryot who has held for less than three years shall not be liable to pay a higher rent unless he has made a written agreement to do so, or unless a notice demanding such higher rent has been served on him at least three months before the expiry of the year preceding that for which such higher rent is demand. Such notice must set forth the grounds upon which such higher rent is demanded, but these grounds are not to be limited by anything in the Bill. If the ryot is unwilling to pay the higher rent, he may relinquish the land. If he does not relinquish it, he will be liable to pay the higher rent, but not so as that he shall pay more than double the former rent. Following the case-law we have enacted, by way of explanation, that when any such ryot is served with a notice to quit *or* pay a specified increased rent, and he elects to remain in possession of the land, the tenancy cannot be treated as determined, and the notice must be taken as a notice to pay the higher rent thereby demanded.

Legislation upon the subject of land used for building purposes.

§ 108. The majority of us are of opinion that it is expedient to legislate upon the subject of land used for building houses and similar purposes as well in agricultural villages as in towns. We believe that the non-agricultural population has increased and is increasing, and that even away from towns and cities there is, in rural villages, a considerable number of persons who, though holding no land used for agricultural purposes, occupy, and in many cases have for years occupied, a site for their dwelling-house. The trading class, whom it is desirable to encourage, the *mahajan*, the shop-keeper, require land for their houses, shops and *golahs* or granaries. The zemindar in some places receives a higher rent for the land, *bastu*, *udbastu*, used for these purposes; and the construction of a new village, or the extension of an old one has, usually been a recognized source of legitimate profit. We think it reasonable to protect the zemindar, on the one hand, in the enjoyment of this source of increased income where it exists, and the tenant, on the other hand, from the contingency of arbitrary eviction. A successful tradesman or handicraftsman has usually a great desire to erect a *pukka* or brick-built house, but the difficulty of getting a good title to the piece of land required for the site deters him from expending his money lest he should afterwards be ejected. In cases of ejectment leave is usually given to remove the materials, but in the case of a newly-constructed brick-built house this is somewhat of a mockery. We believe that nothing contributes more to raise the standard of comfort amongst a community than the erection and use of comfortable dwellings, and we have accordingly endeavoured to afford facility and encouragement to this improvement as well amongst the agricultural as the non-agricultural class.

Ryot may erect brick-built or other suitable residence upon his holding for his own use;

but may not use the land to build houses for third parties.

§ 109. We have, in the first place, provided that in the case of land used or let to be used for agriculture, horticulture, pasture or other similar purpose, a ryot may not, without the permission of his landlord, use any portion of such land for building or any other purpose inconsistent with that for which it was previously used or let to be used; but that a ryot may, without his landlord's permission, erect upon his holding a brick-built or other dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto. The effect of this will be that, although a ryot will be authorised to erect a suitable and comfortable residence for himself, and will be protected if he does so, he will yet have no right to erect a *pukka* shop or manufactory on his land, or convert his holding into

building sites for houses to be occupied by third parties. If a new town or village springs up and arable land is required for building purposes the right-of-occupancy ryot cannot appropriate the whole of the increased value which would be given to the land by its being used for building purposes, for without the landlord's permission he cannot use it for these purposes. The landlord is equally unable to appropriate the whole of this increased value, for, as the ryot is in possession and cannot be evicted, he cannot let the land to a third person who may desire to build upon it. As therefore building operations cannot be commenced without the consent of both landlord and ryot, and as it is for their mutual benefit that some arrangement should be made for the division of the increased value, it is reasonable to expect that self-interest will lead to the making of such an arrangement, the result of which will be that both the persons whose united interests constitute property will share in the increase of value (see section 36 of the draft Bill).

Procedure if ryot changes the use of the land without the landlord's permission, and landlord is diligent in ascertaining his rights

§ 110. If the ryot without obtaining the permission of his landlord begins to change the use of the land, the landlord may serve him with a notice requiring him to desist. If the ryot does not attend to this notice, the landlord may then go to the civil court and obtain a mandatory injunction. If the ryot does not obey this injunction, he may be ejected by the civil court, and may be required to pay, by way of damages, a sum sufficient to restore the land to its former condition. Messrs. Mackenzie and O'Kinealy object to the ryot being made liable to ejectment, but a majority of us consider this sanction advisable. It is to be observed that, if the ryot claims to be entitled on other grounds to change the use of the land, he can put this claim forward as a defence to the landlord's suit for a mandatory injunction. Having thus afforded him an opportunity of contesting the justice of the landlord's position, we think it not unreasonable to say that if, having paid no attention to the landlord's notice in the first instance, he further persists in treating the court's injunction with contempt, he may be ejected (section 38 of the draft Bill).

Procedure where landlord sleeps over his rights

§ 111. Owing to the uncertain state of the law many ryots entertain a *bonâ fide* belief that they may build as they please upon their land. We have therefore provided that when a ryot begins to change the use of his land, and his landlord not being diligent in looking after his property delays to serve him with notice to desist and to follow it up by obtaining a mandatory injunction, even if such an injunction is afterwards obtained, the ryot shall not be liable to eviction, and he shall be entitled to compensation for loss sustained by him in consequence of his having to remove any buildings or works erected by him before he received notice to desist. This, it will be observed, is a different case from that which follows, and where the ryot is able to show that his landlord was aware of what he was doing, and being aware stood by in silence and allowed him to expend his money on building or other works. It may be said that, if this Bill be passed, the state of the law will no longer be uncertain, and the ryot will be aware that he has no right to build except for his own residence; that, therefore, if he builds in violation of the law, it is not reasonable to give him compensation for taking down a building which he has erected without a shadow of right. To this it must be replied that in these matters of private right depending upon civil enactment and not involving a violation of the law of nature, we think that the maxim—*Ignorantia juris non excusat*—has been pushed too far. Whatever presumption there may be in these provinces that an educated zemindar knows the laws made by Government and published in the *Gazette*, this presumption is very much less in the case of the illiterate ryot. In this view we make a great difference between the case of the landlord who in this matter is watchful of his rights and prompt to enforce them, and the case of the landlord who is remiss and inattentive in the management of his property.

Landlord estopped from objecting to the use of the land being changed in certain cases

§ 112. But there is a third case, namely, where the landlord, being aware that the ryot has begun to change the use of the land, makes no objection and allows him to go on expending his money on building or other work. In this case and also where the landlord has for two years given no notice to desist—and here it is immaterial whether he was or was not aware—we have provided that the landlord shall be estopped from afterwards objecting to the change in the use of the land. To those who regard a ryot having a right of occupancy from the stand-point of the English law of landlord and tenant, we shall not be

surprised if some of these provisions appear objectionable; but if the ryot be admitted to have certain rights in the land, the judgment pronounced upon them will be different.

Right of occupancy may be acquired in land used for building or other similar purposes. Nature and incidents of this right of occupancy

§ 113. When land has been customarily used, or has been let to be used, for building or for any purpose other than agriculture, horticulture, pasture or the like, we have provided that a tenant who has been in the immediate possession thereof for the full period of twelve years shall, in the absence of a contract to the contrary, acquire a right of occupancy therein and shall not be liable to be ejected. We have, however, thought that this provision should not be made retro-active, and no time antecedent to the commencement of the Act can therefore be reckoned in the computation of the twelve years required to create this right of occupancy. The interest so acquired has been declared to be heritable, transferable, and devisable, and also liable to sale in execution of any decree of the civil court. If the tenant does not pay his rent, the landlord may bring the land, together with any buildings thereupon, to sale in execution of any decree obtained for arrears of such rent (section 41 of the draft Bill). We have further provided that the rent of any such holding, if not enhanced during the previous ten years, may be enhanced so as to be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or so that it may be equal to five[1] per centum of the market value of the land (section 42). We trust that these provisions will in course of time settle the mutual rights of landlords and tenants of land occupied with buildings.[2]

Doubts as to the applicability of the doctrine of Merger removed by express provisions

§ 114. Whether the doctrine of Merger applies in the mofussil is a question upon which the decisions of the highest tribunals are not of one accord. Any doubt as to the state of the law on a point like this is certain to create litigation, which can be prevented by making the law clear and indubitable. In a country where there are so many interests intermediate between the *zemindar* at the top and the cultivator at the bottom, it is especially important that it should be known exactly what consequences ensue when the zemindar or the owner of any intermediate interest acquires the interest immediately subordinate to his own. We have provided (section 43) that when by purchase at private or public sale, or by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and extinguished by the fact of the same person being owner of the estate and the tenure. The same provision is made applicable to the owner of any superior interest acquiring the interest immediately subordinate thereto (section 44). We have here followed the principle of equitable Merger which is governed by the intention (if it be a just and fair intention) of the person in whom the two interests unite, and by the purposes of justice. Having regard to the frailty of oral evidence in this country, we have, however, cast upon the person in whom the interests meet the burden of shewing an intention to keep them separate by producing a duly registered deed declaratory of such intention, and by proving that a copy of this deed was published upon the land included in the tenure or under-tenure. This evidence of intention is required when three months have elapsed from the date of the Merger. This interval will afford sufficient time for consideration and for the execution of the deed in those cases in which it is decided to prevent the Merger.

Cases in which Merger shall not take place

§ 115. We have provided that there shall be no Merger when the superior interest belongs to several coparceners, some but not all of whom acquire the interest immediately subordinate. Any other rule would be productive of confusion, regard being had to the peculiar nature of coparcenary. We have enacted that the presumption of Merger shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind. As the presumption is made to depend upon intention, it cannot reasonably have effect until the person in whom the interests meet is capable of a legal intention. It would be inequitable that, apart from

[1] Here, as elsewhere in the Bill, the figures inserted should be regarded as tentative merely, to be changed for good reason shown by those who criticise the Bill.

[2] The present state of the law in Bengal and the North-Western Provinces as to land used for building and other non-agricultural purposes will be found summarised in Mr. Field's Note of the 24th December 1879, which has been placed with the proceedings of the Commission.

the provisions of law as to the avoidance of incumbrances by the sale of a tenure or under-tenure for arrears of its own rent, persons having a lien upon the inferior interests, or holding as tenants under the former owner of such interests, should be prejudiced. We have accordingly provided for the protection of such persons and their rights.[1] The question of Merger, when Government acquires an estate and the paramount title and proprietary interest thus meet in the person of Government, has already been referred to in paragraph 5 above.

Protection of persons having a lien upon, or holding as tenants under, the inferior interest.

§ 116. The registration of transfers of tenures and under-tenures in the *sarrishta* of the superior landlord, is a subject which has on more than one occasion received the attention of the Legislature. Since the earliest times a record has been kept in the Collectorate of the transfers of revenue-paying estates, in order that Government might be apprised as to who is the person for the time being liable to pay the revenue. When *patni* tenures were created their incidents were in many respects assimilated to those of revenue-paying estates. We may take, for example, the liability to sale for arrears, the avoidance of incumbrances by such a sale, and further (which is pertinent to our present subject) the registration of transfers. The proprietor was required, upon a fee being paid and security being given, to register all transfers and otherwise give effect to them by discharging the transferor from personal responsibility and accepting the engagements of the transferee. Act X of 1859 required all dependant *talukdars* and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivators to register in the *sarrishta* of the zemindar or superior tenant, to whom the rents of their *taluks* or tenures were payable, all transfers of such *taluks* or tenures or portions of them by sale, gift or otherwise, as well as all successions thereto and divisions among heirs in cases of inheritance. The zemindar or superior tenant was further required to admit to registry, and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions, and, if he refused to do so, an application could be made to the Collector who was empowered to inquire and, if he saw fit, make an order for registration. Act VIII (B.C.) of 1869 reproduced so much of these provisions as required the tenant on the one hand to register, and the landlord on the other hand to admit to registry; it omitted any provision for compelling the landlord to admit to registry, no doubt because it was thought unnecessary to make any such express provision, when the cognizance of all cases arising out of the relation of landlord and tenant was transferred from the revenue to the civil courts. The right being declared, the civil court could afford a remedy.

Registration of transfers of tenures and under-tenures. Provisions of the former law on the subject.

§ 117. When a *patni* tenure was sold in execution of a decree and the purchaser did not within one month register his purchase, the *zemindar* was empowered to send a *sazawal* and attach the tenure; and so also, if a purchaser at a sale for arrears of rent failed for one month to furnish security when required by the *zemindar*. In other cases, however, the landlord had no means of compelling the transferee to register, and non-registration in this case of private transfers soon became usual. Two causes contributed to this: First, the landlord was by law entitled to a fee upon registration of the transfer of a *patni* tenure, and the payment of such a fee was customary in the case of other tenures and under-tenures. The payment of this fee was avoided by not registering the transfer. Secondly, the habit of holding land *benami* was facilitated by secret private transfers. Persons unacquainted with the customs of this country may ask how the transfer could be kept secret when the transferee has to pay the rent. The answer is to be found in a practice very prevalent in this country. Rent is ordinarily received from any one who brings it, but the receipt is granted in the name of the person, whose name stands in the landlord's books. Thus, a receipt may be given in the name of a man who died forty years ago, the payment being stated therein to be made *marfat, guzrat*, *i.e.*, by, or through the person, who actually brought the money. This practice, which appears to us to be a very mischievous one, constantly leads to litigation when a balance of rent remains unpaid after the sale of the tenure, or when for other purposes it is necessary to ascertain the real owner of the tenure.

Failure of the former law, because landlord had no means of compelling the registration of transfers except in a few cases.

[1] The present state of the law of Merger will be found summarized in Mr. Field's Note of the 19th December 1879, annexed to the proceedings of the Commission.

Provisions of the draft Bill as to the registration of transfers of tenures, under-tenures, and occupancy holdings.

§ 118. Turning now to the provisions of the draft Bill, we have enacted (section 46) that every succession to, or transfer of, a tenure or under-tenure or any portion thereof, or of an occupancy holding, shall, within three months after such transfer or succession, be registered in the *sarrishta* or Rent-office of the landlord to whom the rent of such tenure, under-tenure or occupancy holding is payable. It may possibly be that the period of three months here allowed is too short, and that six months would be a more proper period. The landlord is required to admit to registry and otherwise give effect to every such transfer or succession, but no landlord is required to give effect to any division or distribution of the rent, nor shall any such division or distribution be valid against him without his consent in writing. We have defined the term "transfer" to mean a transfer by private sale, gift or exchange, or by sale in execution of a decree, and we have defined "succession" to mean devolution by will or by inheritance. We have declared the landlord entitled to a fee upon every registration of a transfer or succession, such fee to be two per centum of the annual rent, but not to be less in any case than one rupee or more than one hundred rupees (section 47). We have provided that in every case of transfer not being a transfer by sale in execution of a decree, the transferrer shall cease to be, and the transferree shall become, personally liable for the rent from and after the date of application for registry. This applies to cases of private transfer, which must be known both to the transferrer and the transferee, who thus have it in their power to regulate their liability for the rent falling due subsequent to the transfer (section 48). If no application is made for the registration of the transfer, the transfer remains liable for the rent, and the landlord is not bound to recognise the transfer (section 49). It is thus made the interest both of the transferrer and of the transferee to have the transfer registered—of the former, that he may escape liability for future rent, of the latter that he may be able to assert his rights as tenant. When the transfer is by sale in execution of a decree for arrears of the rent of the tenure, under-tenure or occupancy holding, the transferee or purchaser becomes liable for the rent from the date of the confirmation of the sale by the court. Here, as the sale is made at the instance of the landlord, he must be presumed to be aware of it, and it would be unreasonable to hold the late tenant responsible for the rent after the confirmation of the sale. When the transfer is by an execution sale not being a sale for arrears of rent, the landlord does not necessarily know of the sale. The tenant, whose interest is sold in execution, must be presumed to know of the proceedings before and after decree, and we have therefore imposed upon him the duty of giving the landlord notice of the sale if he wishes to be absolved from personal liability for rent. In cases of succession we have declared the person succeeding to be, upon taking possession, personally liable for the rent from and after the death of the previous tenant. It will be remembered that in all these cases the tenure, under-tenure or occupancy holding can be sold for arrears of its own rent, and that the question of personal liability becomes important only when the arrears are not liquidated by the sale of the tenure, under-tenure or holding.

Consequence of non-registration of transfer or succession in the case of a tenure or under-tenure.

§ 119. The consequence of non-registration of a private transfer is, as we have just explained, that the former tenant is not discharged from his liability for the rent, and the landlord is not bound to recognise the transfer. The position of the latter is, therefore, not altered to his detriment. In cases of transfer of a tenure or under-tenure by execution sale, and in cases of succession, we have provided that if application is not made for registration within three months, the landlord may attach the tenure or under-tenure and collect the rents, for any surplus of which over and above his own head-rent and the collection-expenses he is, however, liable to account. The attachment may be continued until the transfer or succession is registered, and, if the collections are insufficient to discharge the head-rent, the superior landlord may bring the tenure or under-tenure to sale. If after the sale there is still a deficiency, he may proceed to make the transferee personally liable. Mr. O'Kinealy is opposed to extending the right of attachment to under-tenures.

§ 120. In cases of succession to occupancy holdings and of their transfer by execution sale, a somewhat different procedure is necessary, as they are usually cultivated by the occupier, and in this case there are no rents to collect. We have accordingly allowed the landlord to attach the holding, when registra-

tion has not been applied for within three months, and cultivate it or let it for cultivation. If registration is not applied for before the expiry of the year next ensuing after the succession of transfer, we have provided that the holding shall be at the absolute disposal of the landlord. We think that if the person succeeding or purchasing takes no steps to effect registration for more than a year, this may reasonably be taken as an abandonment of the holding (section 51).

Consequence of non-registration of a transfer or succession in the case of an occupancy holding.

§ 121. We have provided (section 46) that application for registration shall be made within three months after the date of the succession or transfer, and in this case the fee to which the landlord will be entitled upon registration is two per centum of the annual rent. If registration is not applied for within three months, we considered what the penalty should be for failing to apply within time. Forfeiture of the tenure or under-tenure was suggested, but we are all agreed that this would be too severe, and a majority of us have finally decided that it will be sufficient to provide that the penalty for coming after the three months shall be the payment of ten times the ordinary fee, subject, however, to a minimum of ten rupees and a maximum of one thousand. The same rule applies to an occupancy holding after the three months and before the expiry of the year next ensuing after the succession or transfer by execution sale. Mr. O'Kinealy would not impose any additional fee by way of penalty, and would limit the sanction for non-registration to the landlord's not being bound to recognise the succession or transfer. Where a landlord without just cause refuses to register a transfer or succession, we have provided for a civil suit to compel him; and if pecuniary loss has resulted from his refusal, the civil court may award damages to the person injured. We have enacted that the Board of Revenue may prescribe for any class of landlords a form of register of successions to, and transfers of, tenures, under-tenures and occupancy holdings: and that when any such form has been prescribed, every person concerned in any such succession or transfer shall be entitled to a copy of the entry relating thereto on payment of a fee of four annas. Having regard to the large number of petty landlords in these provinces, we considered that we ought not to prescribe this register for all landlords generally, while in large estates such a register may be maintained with most of the advantages of a court roll in an English manor.

Time within which registration must be applied for. After this time, registration only on payment of ten times the fee.

If landlord refuses to register, civil court may compel him, and may award damages.

Board may prescribe form of register of Transfers and successions.

§ 122. The only class of tenure-holders who under the existing law are required to give security for the payment of their rent, are *patnidars*. In every case of transfer of a *patni* tenure by private sale, gift or exchange, or by sale in execution of a decree, the transferree may be required to give substantial security to the amount of half the yearly rent, and, if such security be not furnished, the proprietor may refuse to register the transfer. We have reproduced these provisions relating to *patni* tenures; but it has suggested itself as a matter for consideration whether similar provisions might not well be made for all tenures, under-tenures, and occupancy holdings, which are made saleable in execution of decrees for their own arrears of rent. We have not before us sufficient materials to enable us to settle this question to our satisfaction, but we recommend that it be not lost sight of in any further discussion of the whole subject which may ensue upon the publication of this report.

Security for payment of rent upon registration of transfer.

§ 123. We have declared that the rent payable by a ryot shall be paid in four quarterly instalments falling due upon the 1st Asarh, the 1st Asin, the 1st Pous, and the 1st Cheit, respectively. When the instalments of rent have been regulated by any agreement or custom, then the Asarh instalment shall be the total of the instalments payable according thereto during the months Beisakh, Jeyt and Asarh; the Asin instalment shall be the total of the instalments payable in the months Sraban, Bhadro and Asin; the Pous instalment shall be the total of the instalments payable in Kartik, Aghun and Pous, and the Cheit instalment shall be the total of the instalments payable in Magh, Falgun and Cheit. It will be important to ascertain whether these dates and months will be suitable for all districts in Bengal and Behar. When no such agreement or custom exists, the Collector is to determine what proportion of the whole rent shall be payable at each quarterly instalment, and is to publish throughout his district the proportions so settled. In the case of rent payable by tenure-holders and under-tenure-holders, we have allowed the parties to contract as to the instalments most convenient to both parties (section 55).

Ryot's rent to be payable in four quarterly instalments:

on 1st Asarh, 1st Asin, 1st Pous, and 1st Cheit.

Instalments of rent payable by tenure-holders and under-tenure-holders Arrears of rent and interest thereupon.

Where no such contract has been made, such rent is to be payable, as ryots' rent, in four quarterly instalments. Any instalment of rent not paid before *sunset* of the date on which it is due according to the above provisions, is to be deemed an arrear of rent, and is to bear interest at the rate of twelve per centum per annum. We have made it imperative upon the courts to decree this interest, unless the tenant can show that he was prevented by causes beyond his own control, as, for example, by a total failure of the crops, from paying his rent at the proper time. A majority of us consider that this is a reasonable concession to landlords, as we propose to take away the frequent instalments in which ryots' rent is now payable by usage or agreement, and to allow no interest for the interval between the dates on which rent is so payable and the new dates substituted by the Bill.

Provisions of the Bill as to receipts for rent;

§ 124. As to receipts for rent we have substantially adopted the provisions of Mr. Mackenzie's Bill. We have declared that every tenant, who makes a payment to his landlord of rent *or of any money recoverable as rent* is entitled to obtain thereupon and without delay a receipt for the amount so paid. The words in italics are new and include road-cess, sums payable under "The Bengal Embankment Act, 1873", under "The Bengal Survey Act, 1875", and other Acts, which have made certain sums recoverable as arrears of rent. We have not thought it desirable to prescribe any particular form in which receipts should be given, but we have prescribed the essential particulars which they must contain, *viz.*, the date of payment, the amount paid, or, where rent is paid in kind, the quantity of produce delivered, the tenure, under-tenure, holding or land, and the instalment and year, in respect of which the payment is made. The receipt may be in any form so long as it contains these essential particulars. We have further provided that every tenant is entitled to receive at the close of the year a statement of account showing the tenure, under-tenure, holding or land for which the rent is payable, the annual rent payable, the amount in arrear at the beginning of the year, the payments made during the year, the portion of each payment credited to arrears and to current rent, and the amount in arrear at the close of the year. This is, in fact, the *akhiri dakhilah*, or final receipt usual in the country under different names, but with the particulars essential to enable the tenant to know his exact position towards his landlord. We have further enacted that the landlord shall keep counterparts of the receipts and the account statements; and that he shall provide himself with forms of such receipts and account statements with the counterparts attached, bound together in books containing not less than twenty-five each and consecutively numbered. We have allowed six months after the commencement of the Act for landlords to provide themselves with the necessary forms. After that time the omission or refusal to give a tenant on demand a receipt or statement of account containing the above particulars shall subject the landlord to the penalty provided for withholding a receipt for rent paid (section 57).

and as to statements of account at the end of the year.

Deposit of rent—duties connected with, transferred from the civil courts to the revenue authorities.

§ 125. We have made important alterations and amendments in the law relating to the deposit of rent. In the first place we have transferred the duty of receiving these deposits from the civil courts to the revenue authorities, and we have allowed rent to be deposited not only at the Collectorate Treasury at head-quarters, but also at Sub-divisional Treasuries. We think that where sub-divisions have been established, the benefit of the sub-divisional system should be afforded to the people in this as well as other respects. Under the existing law there is only one case in which rent can be deposited, namely, when the tenant has tendered the rent to his landlord and the landlord has refused to receive it. We have retained this and have provided for two other cases: (1) when the rent is payable to coparceners, who have not appointed, and on behalf of whom the District Judge has not appointed, a common manager, and the tenant is unable to obtain their joint receipt; (2) when, in consequence of a disputed succession or other cause, the tenant entertains a *bonâ fide* doubt as to who is entitled to the rent. We trust that the result of these changes will be, in the first case, to constrain coparceners to make proper arrangements for the collection of their rents; and, in the second case, to check the unwholesome practice of litigating questions of disputed title by collateral issues raised in rent suits, and in both cases to save the ryots from much harassment. We are aware that the facility afforded to tenants of depositing their rent in cases of tender made and refused has been abused to a

Deposit of rent allowed in two new cases.

certain extent, rent being too often deposited without any tender having been made, and it being impossible to bring persons who have made false statements, to punishment in consequence of the very general nature of the allegations inserted in their petitions. To prevent abuse of the law as amended, we have now provided that in cases of tender the deposit must be made within ten clear days from the date of the tender, and in other cases, within fifteen clear days from the day on which the rent fell due. The deposit is to be made by presenting a written application and with it a written declaration. In cases of tender this declaration is to set forth the date of such tender and the persons in whose presence it was made. In other cases it is to set forth sufficient facts to enable the revenue authorities to judge whether the case falls within the provisions of the Act. The amount deposited must be the full amount of rent due up to date, with, in the case of a tender, the interest (if any) due thereupon at the date of tender. The officer in charge of the Collectorate or Sub-divisional Treasury is required to give a receipt for the rent so deposited, and this receipt is declared to have the effect of a legal acquittance.

Precautions against abuse of the law.

§ 126. The effect of these provisions, together with the provisions as to quarterly instalments of rent, will be that on four occasions in the year, during some ten or fifteen days, there will be a pressure of work at the treasuries at head-quarters and at sub-divisions. This pressure may be very considerable upon the occurrence of abnormal circumstances, but as local authorities will be fully informed of the time of its possible occurrence, they can be prepared for it. We have endeavoured to abridge the work of issuing notices of deposits to the landlords, by providing that the treasury officer shall post in a conspicuous place in his office a notification of such deposits having been made, addressed to the persons entitled to the rents. As most landlords of any position have agents or mukhtars about the Collectorate and sub-divisional offices, the probable effect will be that such agents on seeing the lists of deposits will draw the money without delay, and that the trouble of issuing individual notices will be obviated. If no application for the money is made on the part of the landlord within fifteen days after such notification has been posted, the treasury officer shall within a further period of fifteen days after the expiry of the first-mentioned fifteen days cause a notice to be served upon him. The cost of serving this notice will be deducted from the amount of the deposit. This will make it the interest of landlords to inspect the lists of deposits and obtain the money before the notice is served. The rent deposited may be paid, in the case of a tender, to the person entitled to it; in the case of coparceners, upon their joint receipt or that of their common manager, when a common manager has been appointed; and in cases of disputed title, to the claimants upon their joint receipt, or to any of them who has obtained a decree establishing his title to the whole or part of it. If no payment be made for three years the amount deposited may be refunded to the depositor upon his giving back the receipt given him at the treasury for the money when deposited. This, of course, is not meant to interfere with the rules of the Account Department, which require the special order of the Accountant General before deposits of more than three years' standing can be repaid. In order to meet cases in which, notwithstanding the deposit, the landlord has sued for the rent and has obtained a decree because the deposit was not made in accordance with the provisions of the law, we have enacted that before the expiry of three years the amount may be paid, upon the joint application of the depositor and the person entitled to the rent, in any manner requested in such application. This will enable the money deposited to be made available in satisfaction of the decree obtained for the rent improperly deposited.

Probable effect of these provisions in creating work at the Treasuries—plan for reducing the possible pressure.

Refund of deposits.

§ 127. Another fruitful source of litigation and harassment to the ryots is the want of sufficient provision for the apportionment of rent. When revenue-paying estates belonging to coparceners are partitioned between them by metes and bounds, "The Estates Partition Act, 1876" (VIII (B.C.)) provides certain rules for the apportionment of the rent of tenants whose lands fall partly within one share and partly within another. There are, however, no similar rules applicable when revenue-free land, or a tenure or under-tenure in revenue-paying land, is divided, either in consequence of part being sold, or by reason of a partition between co-heirs which can be enforced in the civil courts. The objection to apportionment of rent is that the tenant is thereby exposed

Apportionment of rent—No sufficient provision for, in the existing law. Inconvenient results.

Advantages of apportionment.

to several suits for a thing which was originally entire, and that he ought not to be obliged to pay his rent in different parcels and to several landlords when he contracted to pay in one entire sum to one person. This is an argument put forward wholly in the interest of the tenant, and we think that, if the convenience of the tenant alone is to be considered, any supposed advantage obtained by him in paying his rent in one parcel is in this country more than counterbalanced by the worry to which he is sure to be exposed when his landlord's property is split up and his land falls within two or more of the shares into which it is divided. Any argument drawn from the convenience of the tenant is here in favour of apportionment rather than otherwise. Were this not so, we would yet agree with those who observe that apportionment of rent is required by the necessities of mankind, by the exigencies of families, by the demands of business; that the tenant can avoid a multiplicity of suits by punctuality of payment; and that it is difficult to see the reality of the hardship to which he is exposed, since he has to pay no more in the end than his stipulated or customary rent.

Provisions of the draft Bill as to apportionment of rent.

§ 128. We have accordingly provided that when two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively (section 62). We have further provided that the apportionment may be made by mutual agreement between such persons and the tenant; but, if they cannot agree, the civil court may, upon the application of any of them, proceed to make the apportionment, and may for this purpose direct a measurement of the whole or any portion of the land. We may observe that the facility afforded to tenants of depositing their rents in cases of disputed claim between their landlords will have the effect of constraining the latter in many cases to take steps for apportionment either by mutual accommodation or by proceedings in court.

Every tenure, under-tenure and occupancy holding declared to be hypothecated for the rent thereof.

§ 129. We have declared every tenure, under-tenure, and occupancy holding to be hypothecated for its own rent, and that such rent shall be a first charge thereupon (section 64). We have then enacted that when the rent is in arrear the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought the tenure, under-tenure or occupancy holding to sale, either in a summary manner (in those cases to which the provisions of Chapter XVI are applicable) or in execution of a decree for rent. A very important change is involved in these provisions. As the law now stands, the produce of the land is, but the land itself is not, hypothecated for the rent. The hypothecation of the produce is part of the law of distraint which we have abolished. We think that by hypothecating the tenure, under-tenure or occupancy holding for the rent, by making the rent a first charge upon it, and by compelling the landlord to proceed in the first instance against the tenure, under-tenure or holding, we shall, on the one hand, secure to the landlord punctual payment of his rent, or effectual facility in realizing it when not paid, regard being here further had to the procedure provisions of the Bill, and, on the other hand, protect the tenant from useless harassment. Realization of arrears of revenue or rent by the sale of the defaulter's interest is a principle now long established in the country and well understood by the people. That as a means it is successful, we know from experience of its operation in the case of revenue-paying estates, *patni taluks*, and other tenures. We have every reason to conclude that it will be equally successful in the case of occupancy holdings. Indeed, we are not without previous experience in respect of these also, many landlords, of their own option and as the readiest way of getting their rent, having brought ryots' holdings to sale in execution of decrees obtained for rent. The largest amount of rent which a landlord can sue to recover is about four years' rent. There are few occupancy holdings in fairly populated districts which are not worth four years' rent with the costs of getting a decree for it. If the landlord has any doubt on this point, he need not allow more than a single year's rent, or even than a single quarter's rent, to fall into arrear without suing for it.

Consideration of these provisions.

Sale of a ryot's holding the most

§ 130. We hope that the procedure which we have provided will enable a landlord to obtain a decree without unreasonable delay. Having obtained his

decree, he can at once proceed to sell the tenure, under-tenure, or occupancy holding. It is well known that if a ryot has the means of paying there is no more effective way of making him pay than putting up his *jumma* or holding to sale. He will go to prison for a debt if he is sure of having his land when he comes out. He will let his cattle be sold, for he may hope to purchase others as good in their place. But his land, whereon stands his homestead, where he was born and spent his childhood and boyhood, the fields which his father and his father's father cultivated, find for him no substitute if they pass into the hands of strangers. As a means then of compelling the ryot to pay, who can pay, we believe that the advertised sale of his *jumma* or holding will be most effectual. If from misfortune or other cause the ryot is unable to pay, the sale is, as we have shown, almost certain to satisfy the landlord's claim for rent. In compelling the landlord then to proceed to the sale, we compel him to do what is for his immediate interest. But it may be said that the landlord may not wish to be hard on his ryot, may not wish to deprive him of his land, may be satisfied with part of the debt, and may be willing to wait for the rest until the ryot is in more fortunate circumstances, and that, if allowed to take the ryot's movables or put him in jail, he may accomplish this. We are not prepared to accept these arguments or take this view. We think that the threatened sale of his holding will have as strong a compulsory effect as putting him in jail, while the seizure of his movables will only leave him unable to carry on the cultivation. If the landlord desires to exercise mercy and forbearance towards an unfortunate ryot who does not pay, not because he will not, but because he cannot, let him stay his hand and not execute the decree. He is not bound to proceed to the sale of the holding. If the ryot can pay even part, let him take it and certify the payment to the court. There is nothing in the law to hinder him from doing so.

Effectual way of making him pay if he can, and of realising the rent if he cannot.

Examination of the question from the landlord's point of view.

§ 131. So much for the question from the point of view of the landlord's interest. Let us now examine it from the point of view of the ryot's interest. We think that the dread of losing his land by a sale will operate to make the ryot more careful to pay his rent and not get into arrears. It may be said—Why has not the fear of ejectment done this? Why should the dread of a sale be more effectual than the dread of ejectment? To this we reply that, unless in the case of a ryot who has become really obnoxious to his landlord, and whom that landlord is determined to get rid of at any price, ejectment is not usually enforced; the ryot pays a trifling *salámi*, or agrees to pay a little more rent, and either the decree for eviction is not executed, or, if it is executed, he is allowed to resume possession. But in the case of a sale the land passes to a stranger, and return to possession becomes impossible. If the ryot is unable to pay his rent because of indolence or bad cultivation, it is for the interest of the community that the land should be sold and come into better hands. If, by the operation of the Hindoo or Mahomedan law of inheritance, the holding comes into the possession of a number of co-sharers who cannot agree, and owing to their dissensions and consequent bad management the rent gets into arrear, a sale and a transfer thereby to the hands of more efficient husbandmen will counteract the tendency of that law to create too minute sub-divisions. The fact of holdings being purchaseable, combined with the prevailing and general desire to invest savings in land, may encourage thrift. We know that in some parts of Eastern Bengal the holdings and under-tenures there existing are a very favourite investment for savings, and that men save in order to purchase them. Then to look at the matter in another way, if the land is over-rented, if it is worthless, or its area has been diminished by diluvion and the ryot is unable to bear the expense of a suit for abatement, or does not really care to keep the *jumma*, a sale is a ready means of getting the full value, the surplus over and above the rent being payable to the ryot. If, on the contrary, the ryot has improved the holding and desires to realize the value of his improvements, by allowing his rent to fall into arrear he can bring about a sale, the surplus proceeds of which over and above the rent due to the landlord will be paid over to him. We may observe that even now it is by no means uncommon to effect a transfer by a sale through the court brought about by a wilful default, some purchasers thinking that in this way they get a better title.

Examination of the question from the ryot's point of view.

§ 132. We have so far discussed the proposed change mainly in connection with occupancy holdings, because we think that it concerns them chiefly. Al-

Proposed provisions will generally

speaking, make no real change so far as tenures and under-tenures are concerned.

though tenures and under-tenures are not at present hypothecated for their own rent by any express provision of law, they are in a great measure practically so, this being the result of the decisions as to the landlord's right to follow the tenure or under-tenure in execution of a decree obtained by him for rent; and the usual practice is to realize unpaid arrears by a sale either under the Patni Regulation (VIII of 1819) where it applies, or after decree in execution under the provisions contained in Act VIII (B.C.) of 1865, or Act VIII (B.C.) of 1869. The new provisions will therefore make no substantial change so far as tenures and under-tenures are concerned. There are, however, two points which partake of the nature of an exception to this general statement and which may well be noticed here.' We have provided (section 207(*b*)) that where a tenure, under-tenure or occupancy holding is put up to auction in execution of a decree for arrears of rent, and no bid is made for it, the decree-holder, *i.e.*, the landlord, shall be required to bid for it, and if he refuses to do so, he shall not be entitled to proceed to execute his decree against the person or other property of the judgment-debtor. The object of this provision may be explained in a few words. A tenure-holder or under-tenure-holder cannot relinquish his tenure or under-tenure in the same manner as a ryot can relinquish his holding. It may happen that a tenure or under-tenure may become utterly worthless. One of the great rivers may cover it with sand, or it may be overrun with a noxious weed inimical to cultivation. As the law now stands, the unfortunate tenant may have to go on paying rent for an instrument of production which yields him nothing. If he does not pay, he is sued and a decree obtained against him. No one will bid for the tenure or under-tenure, and so he and his other property are liable to be taken in execution. If he is a person of substance, the landlord succeeds in getting rent year after year for what is utterly worthless. Under the provisions we propose to make, this can happen once, and not oftener. The landlord must bid and purchase, and this purchase relieves the tenant from further liability. This amendment of the present law is in the interest of the tenant; the following is in the interest of the landlord. We have enacted (section 211 (3)) that the landlord may be paid from the surplus sale-proceeds any rent which fell due before the sale and after the date upon which the latest arrear recovered by the decree became due: provided, however, that the decree-holder shall not under this rule recover any rent which he might have included in the suit in which he obtained the decree, and provided also that in no case shall he obtain rent for more than six months after the date of the final decree. In case of dispute as to any such rent being due, the court is to decide. The effect of these provisions will be to prevent multiplicity of suits and to secure the landlord against loss of arrears, which are sometimes very difficult to recover by enforcing a personal liability when the tenure or under-tenure has been sold.

Two important amendments

Landlord compelled to purchase at sale, if no other person will

Shall landlord's claim for rent rank *pari passu* with other debts or be allowed a preference?

§ 133. The draft of this section (64), as first prepared by Mr. Field, contained the following additional passage:—"If any such tenure or under-tenure, or in any case in which a holding is so saleable, any such holding be brought to sale in execution of a decree for money obtained by a person other than the landlord, such landlord shall be entitled to be first paid out of the sale-proceeds any rent which may be due to him in respect of such tenure, under-tenure or holding; and the balance only of such sale-proceeds after such payment of rent shall be available for the liquidation of the decree-holder's claim, or for distribution amongst creditors entitled to such distribution." A majority of us decided to omit these words in the draft of the Bill, but we think that the matter of the words so omitted ought to be noticed, as, if the Bill comes before Council, a different opinion may prevail. According to the existing law a landlord's claim for rent has no preference; and, in the case of his tenant being declared an insolvent under the provisions of Chapter XX of *The Code of Civil Procedure*, he can take only ratably along with the other creditors. We may observe that, according to the law of England, and also, we believe, of America, a landlord has no priority over other creditors; but in order to prevent collusion between tenants and their judgment-creditors to defeat the landlord's remedy, it was enacted by the 8th Ann, Chapter 14, section 1, that no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out

8 Ann. Cap. 14, section 1.

shall, before the removal of such goods from off the said premises, pay to the landlord or his bailiff all such sum or sums of money as are or shall be due for rent at the time of the taking of such goods or chattels, provided that the said arrears of rent do not amount to more than one year's rent.

When rent is payable to coparceners and dissension prevails amongst them, their tenants are exposed to much harassment

§ 134. A serious source of difficulty in the relations between landlords and tenants arises out of the system of coparcenary which is customary amongst Hindoos, and is not uncommonly imitated by Mahomedans. When coparceners, or co-sharers as they are commonly called, stand in the position of landlords, and manage their affairs either through a single member of the family (*karia*), or through a manager appointed by, and acting for all, there is no difficulty and the tenants are put to no greater inconvenience than the tenants of other landlords. But when, on the contrary, the co-sharers are disunited and dissension prevails amongst them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant, who would comply with all their demands, would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant ryots, who are thus induced to pay more rent to one co-sharer than he is entitled to receive, or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these fraudulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *amins* prepare *chitahs*, the entries in which are regulated by the gratifications which the ryots are able or willing to give them. Litigation ensues, and the tenants side with this co-sharer or that; they give evidence and earn brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the police appear on the spot to reap a rich harvest. The ryots are impoverished, cultivation thrown back, and distrust and dissension pervade the village. Such is a picture, by no means overdrawn, of the pernicious results of want of union amongst a brotherhood of landlords.

Remedy provided in 1812

§ 135. The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the revenue authorities or by any of the individuals holding an interest in such estates for the interposition of the courts of judicature, it shall be competent to the zillah Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the revenue authorities, or of any such person as aforesaid, to remove any manager so appointed (*id.*, section 27). A subsequent Regulation V of 1827) enacted that when the zillah court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

Regulation V of 1827

Provisions of the draft Bill for the appointment of a manager, when coparceners disagree

§ 136. Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted therefor. We have accordingly enacted that when coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued, or is likely

to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights, the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or under-tenure, direct a notice to be served upon the coparceners calling upon them to show cause why they should not appoint a common manager. If the coparceners do not within a month show cause why they should not appoint a common manager, the District Judge may direct them to do so (section 65 of the draft Bill). If they fail to obey this direction, the District Judge may either appoint a manager or direct that the estate, tenure or under-tenure be managed by the Court of Wards, if it is willing to undertake the charge. We have thought it advisable to give the coparceners an opportunity of appointing a manager of their own selecting before the District Judge proceeds virtually to depose them. When the Court of Wards undertakes the charge, it will govern itself by the provisions of *The Court of Wards' Act*, IX (B.C.) of 1879 (section 66). It is discretionary with the Court of Wards to undertake the charge or not. A majority of us have thought it advisable to render this system of management possible, as there may be cases in which no other management will be available. Mr. O'Kinealy doubts if it is advisable to extend the exceptional jurisdiction of the Court of Wards and empower it to manage the estates of persons who happen to disagree amongst themselves. When the District Judge appoints a manager, he is empowered to settle his remuneration and the manner of it, whether, that is to say, by a fixed salary or a percentage of the collections. He is also empowered to require reasonable security for the proper discharge of the duties of the office. The manager is authorized to exercise the same powers as the coparceners jointly might, but for his appointment, have exercised. He is required to keep regular accounts and to allow the coparceners to inspect and take copies of them. He may be removed upon the application of the Collector or of any person interested in the estate, tenure or under-tenure (section 67). The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that they will conduct it without inconvenience to the public or injury to private rights.

Powers and duties of the manager

§ 137. We have provided (section 69) that rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or of a manager appointed by them or by the District Judge; and that all such coparceners must join as plaintiffs or be made defendants in any suit brought for the recovery of arrears of any such rent, otherwise that such suit shall be dismissed with costs. In this case, which constitutes the rule, the entire rent must be sued for. To this rule we have made three exceptions: *First*, when the tenant and one or more of several coparceners, with the consent of the other or others of them, have agreed that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share may be so paid and recovered. Here all parties being agreed, no one can be endamaged. *Secondly*, when the tenant has usually paid to one or more of several coparceners without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent may be so paid and recovered. Here the tacit acquiescence of all parties in the arrangement may be regarded as equivalent to an agreement. *Thirdly*, when a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants. We have taken these exceptions from cases actually decided, and we consider that they are proper exceptions to the rule, and that the law as here settled by the decisions ought not to be altered. We have further adapted the case-law in enacting that a coparcener may not otherwise than conjointly with his other coparceners or through a manager (1) bring a tenure to summary sale, (2) measure lands in the occupation of tenants of the coparceners, or (3) enhance the rents of such tenants. These provisions in conjunction with the amendments of the law as to deposits of rent ought to effectually protect the ryots of coparcener landlords from harassment.

All coparceners must, as a rule, be parties to suits for arrears of rent. Three exceptions to this rule

One coparcener may not bring tenure to summary sale, or measure lands, or enhance rents

§ 138. We have collected in Chapter XI some miscellaneous rights of landlords and tenants. Some of these are now to be found in fragments of the unrepealed Regulations: and some are taken from the case-law; while others again are rather tacitly admitted in the decisions of the courts than formally

Miscellaneous rights of landlords and tenants.

enunciated. We have retained the express prohibition against landlords imposing *abwabs* or cesses, or compelling the attendance of their ryots, or enforcing payment of rent otherwise than according to law (section 72). We have enacted that a landlord is bound, upon a new letting, to put the tenant in possession of the property; also that every landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, under-tenure, holding or land, in respect of which the relation of landlord and tenant exists between them; but that this duty extends only to interruption or disturbance by the landlord himself or any one claiming under or paramount to him, and does not extend to interruption or disturbance by third parties (section 73). We have provided that no one may grant a valid lease for a term exceeding his own interest; that a lease granted for a term so in excess is valid to the extent of such interest and voidable only as to the excess; but that, if the lessor subsequently acquires the excess, the lease is, as against him, good for the excess also. We have further provided, in accordance with a suggestion of the learned Chief Justice, that if a person grants a lease of land in which he has no interest to a lessee who obtains possession of such land under such lease, and if such person afterwards acquires an interest in the land, the lease shall be valid to the extent of such after-acquired interest as between such lessor and lessee and persons claiming under them (section 74). These provisions are in accordance with the law of some civilized countries and are conformable to justice, equity and good conscience.

Landlords may not impose cesses or compel attendance of ryots

Landlord bound to put and maintain tenant in possession

Leases granted in excess of interest or where no interest

§ 139. We have re-enacted the provision to be found in the existing law that every landlord, unless restrained from so doing by express engagement with the occupants of the land, is entitled to make a general survey and measurement of all land comprised in any estate, tenure, under-tenure or holding, of the rents of which he is in receipt; and we have further enacted that he is entitled to enter upon such land for the purpose of making such survey and measurement (section 75). The right being thus declared, it follows that it can be enforced through the civil court, as any other legal right can be enforced. We have not inserted in the draft Bill any special provisions as to the mode of enforcing this right in ordinary cases; but, as already noticed, we have provided specially for cases in which a landlord is unable to ascertain the persons in occupation of the lands of his estate, tenure or under-tenure, or the different fields held by each ryot.

Right of landlord to make measurement and survey

§ 140. The length of the local standard pole, with which a measurement of land should be made, is a fertile subject of dispute and litigation. It is not uncommon for a landlord to make a measurement of his lands with a pole of his own selection, the actual length of which must be a subject of doubt upon the evidence, while the ryots concerned aver not only that the standard pole of the *pargunah* is different, but that during the measurement a third pole has occasionally been substituted for that which the landlord claims to be the standard. In order to remedy these difficulties as far as possible we have enacted that all measurements made by order of the civil court or Collector shall be made according to the Government measure of 14,400 square feet to one standard *bigha*. If it be shown that the rights of the parties to the suit are regulated by any different local measure depending upon a parganah standard pole, the Government measure shall be converted into local measure for the purposes of the suit. In case of dispute as to the standard pole, the Collector shall in any suit before himself, or in any suit before a civil court on a reference made for this purpose by such court, determine the proper length of such pole. We have followed the present law, as settled by the decisions, in enacting that an appeal shall lie from the Collector's decision to the District Judge; but that if no such appeal be preferred the decision of the Collector shall be final (section 76).

All measurements to be made according to Government standard of measurement—Conversion when necessary into local measure

§ 141. We have enacted in general terms (section 77) that a ryot may not, without the consent of his landlord, materially alter the condition of the land held by him, so as to render it unfit for agricultural or horticultural purposes; but that a ryot may, without the consent of his landlord, make any of the following improvements:—

Ryot may not render his land unfit for, but may make improvements conducive to agriculture

(*a*) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot and his family;

(*b*) the making of tanks, wells, and other works for the storage, supply or distribution of water for agricultural purposes;
(*c*) works for the drainage of land, or for the protection of land from floods, or from erosion, or other damage by water;
(*d*) the reclaiming, clearing or enclosing of land for agricultural purposes;
(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto;
(*f*) the planting of fruit trees.

Ryot may cut trees planted by himself or his predecessor.

We think that all these improvements ought to be allowed as being conducive to better cultivation and a higher standard of agriculture. We have further provided, in accordance with what a majority of us believe to be customary in many parts of Bengal, that a ryot may cut down and appropriate trees on his holding planted by himself or by any ryot from whom such holding was derived by public or private sale, gift, devise or inheritance (section 77).

Transferree of land lord's interest to give notice of transfer to tenant

§ 142. We have provided that when a landlord's interest is transferred, the tenant shall not be liable to the transferree for rent which became due after the transfer and was paid to the person whose interest was transferred, unless the transferree has given to the tenant notice of the transfer (section 78). Some litigation has arisen in consequence of the want of a rule on this point which is a sufficiently simple one. We have enumerated (section 79) a number of cases in which the relation of landlord and tenant is declared to be determined. Some of these are to be found in the present law, for example, relinquishment by a ryot, and ejectment in certain cases by a landlord. Some are new and are taken from the case-law, the result of the decisions being supplemented, where this was necessary in order to make a principle complete. We may refer to the most important of the latter. We have provided that in the case of a non-transferable holding the relation of landlord and tenant may be determined by abandonment, when the tenant having ceased to cultivate the land or pay rent therefor has been absent from the neighbourhood for a year and the landlord elects to treat the tenancy as determined (section 79, clause 3). In the case of a transferable holding the landlord must proceed to a sale of the holding, and, if the tenant cannot be found, a copy of the summons may be posted upon some conspicuous place upon the land included in the holding (section 174).

Cases in which relation of landlord and tenant determined

Abandonment

Disclaimer by tenant of land lord's title

§ 143. We have carefully considered the question whether a tenant, who disclaims and denies his landlord's title, ought to be punished with forfeiture. Some of us are strongly opposed to forfeiture as a principle; but we are agreed in thinking that when a tenant in a suit to which his landlord is a party disclaims such landlord's title and sets up an adverse title in himself or another by matter in writing or reduced to writing, the landlord should have the option of treating this disclaimer as a forfeiture of the tenancy, if he elects to do so within a reasonable time; and we have enacted accordingly, making six months the time within which the landlord must elect. In order to prevent any hardship in the application of this rule, we have further provided that there shall be no forfeiture in any case in which the tenant, having been let into possession by the person whose title he denied, can show that such person's title had expired or been defeated or annulled at the time of the disclaimer being made; or, having been let into possession not by such person but by another, can show that he admitted the title of such person under a *bonâ fide* misapprehension or mistake. We are all agreed that forfeiture ought not to be the consequence, in this country especially, of mere words spoken under ordinary circumstances, or of a tenant's claiming a greater interest than he may be entitled to.

Avoidance of tenures, &c., by sale for arrears of revenue or rent, but at the election of the purchaser.

§ 144. The revenue sale laws, which have been in force from time to time, have invariably provided, not always in the same language though in all cases to the same effect, that upon a sale of an estate for arrears of revenue all subordinate tenures and incumbrances shall be cancelled or avoided from the date of the sale. It was settled by a well known decision of the Privy Council that the meaning of this provision was, not that the tenures and incumbrances became *ipso facto* void by the sale, but that they were avoidable at the election of the purchaser. The same construction has been put upon similar language in more modern Acts concerned with the sale of tenures for arrears of rent. It

has generally been assumed that the purchaser should exercise his election within a reasonable time after the sale; and, where he has not taken any active steps for a considerable time, the usual inferences have been drawn from conduct partaking of the nature of acquiescence. We think, however, that it is very desirable that there should be a fixed period of time within which the purchaser should decide whether he intends to avoid the tenures or undertenures existing before the sale. We believe that some litigation will be prevented by having such a fixed period; and we have accordingly enacted that if, upon a sale for arrears of revenue or rent, the purchaser desires to avoid any subordinate lease or determine any subordinate tenancy, he must proceed to do so within one year after he had knowledge of its existence (section 79, clause 9).

Election to be exercised within one year after knowledge

§ 145. We have provided by way of explanation (section 79) that when the relation of landlord and tenant exists between two persons in respect of any property, the mere non-payment of rent shall not alone determine such relation. This is in accordance with the law as now settled by the decisions of the courts. In order to prevent arbitrary eviction we have enacted that no ryot shall be ejected otherwise than in execution of a decree or order of the civil court (section 79, clause 5). Any ryot otherwise evicted will have a remedy under section 9 of *The Specific Relief Act*, 1877, and will be able to recover possession under these provisions. We have provided that the right to eject for non-payment of rent of any one year shall be deemed to be waived by the receipt of rent for a subsequent year. There are in the existing law no provisions as to the *away-going crop;* and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a ryot is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such ryot would have been entitled to reap or gather, such ryot shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering and removing the same; and, in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products, the court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.

Relation of landlord and tenant not determined by non-payment of rent merely.

No ejectment except through the court.

Away-going crop—Ryot ejected entitled to, and to enter on land to remove.

But landlord may take at a valuation.

§ 146. In forming an opinion as to what legislative changes are specially required for Behar, we have carefully considered the Report of the Committee appointed[1] to examine the question of the Rent Law for that province, together with the Minutes of the Committee's proceedings. Behar differs from Bengal in two important respects: The *first* point of difference is that, while rent is commonly paid in money in Bengal, such money-rent having no direct connection with the quantity of produce, gross or net, it is paid in many districts in Behar either actually in kind or in the commuted value of a fixed portion of the gross produce.[2] One direct and necessary result of the Behar system is that the

Chapter XII special provisions for Behar

Report of the Behar Committee considered.

Points of difference between Behar and Bengal

[1] See No. 2122 of the 7th September 1878 from Secretary to Government of Bengal appointing the Committee, and No. 214 R. of the 8th March 1879 from Commissioner of Patna, forwarding the report of the Committee.

[2] Under the *Agore Batai* system the crop is actually divided and the landlord's share made over to him. Under the *Danabundi* system the ryot agrees to pay the landlord the market-value of a certain proportion of the produce; the crop is valued at each harvest and rent is paid in money according to this valuation. For further information see letter No. 1180 of 21st August 1868 from Commissioner of Patna, to Secretary to Board of Revenue, the following paragraphs of which are important:—

"4. The second amendment which I propose has also regard to this class of cases. It is of the utmost importance to the ryot that it should be settled between his landlord and himself before he commences his cultivation, how the produce in which they have a joint interest is to be dealt with. Under one system (Agore Batai) the landlord employs men to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure, the crop is cut and threshed by the ryot under the superintendence of the zemindar's servants, and the produce divided on the threshing floor; but it is also matter of arrangement between the parties in this case whether the landlord shall have the straw or only the grain and whether it shall be delivered at the threshing floor of the ryot's village, or at some other place more convenient to the zemindar.

"5. In the Bhaolee and Danabundi tenures, which in the districts of Shahabad and Behar are more common than any others, there is even more room for dispute. In 1849, and again in consequence of a despatch

landlords get the full benefit of every rise of prices, and enhancement on the ground of increase in the value or price of the produce, is a stern reality to the ryots of Behar. The *second* point is that, while in Bengal the ryots are the stronger and the landlords the weaker party, in Behar it is just the reverse, the ryots being (save in some exceptional places) in a depressed condition and incapable of maintaining against their landlords the rights given them by law.

The Behar system a bad metayer system

It is possible that there is some connection in the nature of cause and effect between these two points of difference. The Behar system is really a *metayer* system with most of its worst features and few of the advantages enjoyed by tenants of this class in continental Europe. The European metayer is usually secure in the possession of his land, and is certain at least of half the gain resulting from any improvements which he makes by his own labour or capital. His landlord furnishes half the plough-cattle in some places, and in others half the seed. In many places a house is kept up for him. Thus, he receives considerable assistance towards producing the crop in which he and his landlord are sharers. The Behar ryot, on the contrary, gets nothing but the bare land: his possession is insecure, and he has no incentive to improvement, while the petty oppressions practised in collecting a rent in kind leave him too often less than half the crop, the whole cost of producing which has fallen upon him alone.[3] Then the *ticcadari* or farming system, under which the landlords who should protect their tenantry and take an interest in their welfare make them over to be ground down by *ijarahdars* or farmers, exercises the most pernicious influence on the conditing of the cultivating class in that part of the country.

Improverished condition of the cultivating class in Behar.

Recommendations of the Behar Committee.

§ 147. It will be convenient to consider in order the recommendations of the Behar Committee. They propose, in the first place, to make it obligatory on landholders to file annually in the office of the Collector, or some other public officer, accounts showing (1) the serial number of each ryot, (2) the name of each ryot, (3) the area of land held by him, and the area of the portions thereof for which he pays rent in money and in kind, and (4) the details of each separate annual demand on each ryot, and the total thereof. They say—

Proposal that landholders should file accounts in a public office

"It is held by some of us that ryots by taking copies of these accounts can be certified of the areas of their holdings the rates claimed, and the annual demand upon them: others of us are of opinion that any such extracts would in practice have to be repudiated by the ryot."

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from the Court of Directors in 1851, these tenures formed the subject of a voluminous correspondence. I append three of the most interesting letters which were written on that occasion, in order that those members of the Legislative Council who are not acquainted with the controversy, may become acquainted with its bearings and be made aware of the importance of the subject.* It will be seen from a perusal of these papers how very necessary it is that the contract between the landlord and his tenant in these Danabundi leases should be accurately defined. With this view I would propose that, in addition to the amendments in Section II which I have suggested above, the following provisions should be adopted either in the form of a new section or as a pendant to Section II 'If the tenure be of the kind termed Bhaolee or Danabundi, or any similar tenure in which the ryot engages to pay the landlord the market value of a certain proportion of produce, the pottah shall also specify the market and the month, of which the average rates are to govern the contract, and the date on which the rent shall be considered due.'

* Regulation II of 1796 should also be consulted, as it contains a great deal of information on the subject.

"7. It may very probably be thought by those who have had no experience in this part of the country that payment in kind, or the mixed payments which form the peculiarity of the Bhaolee tenures, should be discouraged as much as possible, and should not be sanctioned by the Legislature, but this would be a very great error. A large portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad or indifferent seasons are more common than good ones. The ryots, having no capital and being an improvident race, would be ruined by one or two bad seasons, if they had to pay fixed money rent. Under a Bhaolee or Batai system on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money they are tolerably secure from ruin. These tenures are therefore very popular, and, when the landlord is a just man, are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent. The only complaint is that owing to the defect of the law, the ryot who holds under these tenures is now practically at the mercy of his landlord.

"18. In Bhaolee cases all my informants here are agreed on the necessity of compelling the production of the Danabundi or estimate papers. In order to render this intelligible, it may be necessary to explain the process of a settlement of accounts under the Bhaolee system. When the crop is ripe the patwari, the gomashta, the *amin*, a *jareeb kush* or mensurer, a *salis* or arbitrator, a *navisanda* or writer, and the *jot* ryots of the village with the ryot himself proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce; the *amin* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the ryot cuts a cottah where the crop is thinest; the zemindar's people cut another where it is heaviest. The produce is threshed out, mixed together, and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a Danabundi, is made out by the patwari and his writer, and signed by those present. The ryot is then at liberty to cut and store his grain. The putwaree next prepares a paper called a 'Behree', showing the amount of grain in the possession of the ryot and the respective shares of the malik and the ryot, and sends for the malik's share, which the ryot either pays in grain or money, as may have been agreed upon. If the agreement is to pay in money, the gomashta writes to the amlah of the surrounding villages for the nirik, or market rate, which is returned on the back of his letter and an average is then struck. It will thus be seen the accounts of the estimate of the crop and its weighment from the chief evidence in these Bhaolee cases and that a jamawasil account is of comparatively little use.

[3] Mr. Dampier is unable to subscribe to the contrast drawn in the above passage.

They further propose that—

"The filing of these accounts should be enforced by dismissing rent suits, unless the plaintiff file with the plaint a deposit receipt for his yearly accounts, or unless he otherwise prove to the satisfaction of the court that such accounts have been duly filed in the rent-roll office."

Proceeding, p. 5

We have duly considered this matter for Bengal, and have come to the conclusion that it is not practicable to compel landlords to keep their accounts in any particular form, or to file them periodically in the Collector's office with such method and punctuality as to make it really worth while to impose so onerous an obligation on Collectors and zemindars. In a report recently submitted by the Commissioner of Patna to the Board of Revenue on the subject of *patwaris* in Behar, the Commissioner, after thoroughly examining the question, gives his opinion that the rules requiring *patwaris* to furnish their accounts should be rescinded. The Collector of Shahabad and the Collector of Chumparun are of the same opinion. Legislation in this direction has already been tried in this country and has failed. If such a rule of law as that proposed by the Behar Committee were enacted, it would be difficult to enforce it. A reasonable sanction is wanting. The individuals who might suffer for not filing accounts or be punished for filing fabricated accounts, would receive, not the odium attaching even with the uneducated to the violation of a natural law, but the sympathy accorded to those who have resisted an unjustifiable command—for such the land-holding community would regard an enactment, the immediate result of obeying which would be to make public the private concerns of every landlord. The construction of record-rooms to contain such accounts, if filed, and the maintenance of establishments to keep them in order would necessitate expenditure for which, in our opinion, there would be no adequate return in the equivocal advantage which might result to the rent-paying class. There is nothing in the circumstances of Behar which leads us to think that we ought to adopt a different conclusion for that Province.

Proposal to declare "jamabandis, jamawasil bakis", &c., inadmissible in evidence.

§ 148. We find ourselves also unable to concur in the suggestion of the Behar Committee "to exclude from evidence loose sheets of paper produced from the *patwari's* or *zemindar's* shcrishta, such as *jamabandis, jamawasil-bakis*, and other papers of that kind". In making this suggestion the Committee hazard an opinion of their own that even under the present law such papers should not be received in evidence. If they are not admissible in evidence, as the law stands, it is not necessary to legislate further in order to make them inadmissible, irrelevancy not being a quality that admits of degrees. All civilized countries have abandoned the attempt to settle by legislation the value of evidence once received, or to define by too nice rules what evidence may be received and what must be rejected. We do not think that we shall on the present occasion be assisted by the revival of exploded theories. The difference between admitting matter in evidence and the weight which may fairly be assigned to it when admitted has long been recognized, and has been acted on in the Indian Code. The degrees of weight are infinite, varying from the thistle-down, that will scarcely turn the nicest balance, to the ponderous weight of the Earth itself. Between the carefully-kept books of an English bank, which containing within themselves a thousand tests of genuineness may further be verified by innumerable external facts, and the loose slips of a Native *jamabandi*, which may be prepared in half an hour and can be tested by few external or internal *indicia* of truth, there is as much difference in value as between a numeral in the place of thousands and the same figure in the fourth place of decimal fractions. We think that the courts must be left to see this for themselves, and to assign to *jamabandis, jamawasil-bakis*, and other such accounts the exact weight to which they may fairly be entitled in particular cases, according to the obvious care with which they are kept, and the tests of genuineness which they contain within themselves, or which may be available from external sources. As a matter of fact, the published reports contain numerous cases showing that these tests are understood and applied. Before leaving this point we desire to point out, with reference to a remark upon section 34 of the Evidence Act, that, although entries in books of account regularly kept in the course of business are under that section relevant whenever they refer to a matter into which the court has to inquire, the section further enacts that they shall not alone be sufficient evidence to charge any person with liability.

Opinion of the Behar Committee as to compulsory interchange of pottahs and kabooliyats.

§ 149. Upon the subject of pottahs and kabooliyats, the Behar Committee say—

"We fear that any attempt to render the interchange of any specific form of pottahs and kabooliyats compulsory would lead to general litigation and strife; that it would embitter the relations of landlord and tenant in Behar; that in the end it might possibly injure, rather than improve, the ryots' condition. Moreover, the compulsory interchange of pottahs and kabooliyats in any express statutory form would involve an enormous increase in the number of registration offices and civil courts, which we do not feel ourselves prepared to recommend. On this head Mr. Browne has made a recommendation, to which the Committee has acceded, namely, that whenever a court decrees rights of occupancy, it shall compel the interchange of pottahs and kabooliyats, specifying the boundaries of the fields in which such rights are decreed."

This coincides generally with the view which we have adopted (paragraphs 7 and 8 above). Mr. Browne's recommendation will be sufficiently met by the provisions of section 151 of the draft Bill as to suits for the determination of the terms or conditions of the tenancy, when read with the provisions of section 167 and with the similar provisions of *The Court of Civil Procedure* as to the particulars to be inserted in plaints. The decree must, under the provision of clause (*c*), section 195 of the Bill reproduce the essential particulars given in the plaint; and a copy of the decree under the seal of the court (a form of document much prized by the natives of this country) will take the place of a pottah for the tenant, and of a kabooliyat for the landlord.

Use of counterfoil receipts for rent.

§ 150. A majority of the Behar Committee are of opinion that the use of counterfoil receipts for rent should be insisted on. They think that—

"Receipts should be in counterfoil, and that the refusal or neglect on the part of the landlord to give a counterfoil receipt in the prescribed form should be deemed a withholding of a receipt;" also "that a suit for rent should not be entertained unless the plaintiff file with the plaint a receipt-book for the period in respect of which the rent is claimed, or for such additional period as to the court may seem necessary."

We have provided (section 57 of the draft Bill) that a tenant is entitled to a receipt containing certain essential particulars, and also to a statement of account at the end of the year; that the landlord shall retain a counterpart of every such receipt and statement of account; and that failure to furnish such a receipt or such a statement may be punished by a penalty. We are not prepared to recommend that the law should go further, or that suits for rent should be dismissed unless the counterfoil receipt-book is filed with the plaint. We think that the inference to be drawn from the non-production of such evidence, and the value of it when produced, are matters which must be left to the courts themselves to be dealt with under the circumstances of each particular case, and that it would be a mistake on the part of the Legislature to attempt to regulate them by any artificial rules of general application.

Recommendations of the Behar Committee as to cheapening and facilitating registration.

§ 151. With a view to cheapen and facilitate registration, the Behar Committee recommend (1) that the registration law should be so amended as to allow a party to file a copy of a deed, and so escape the delay, inconvenience and expense of having a copy made in the registration office for record therein; and (2) that sub-registrars should be allowed to go into the interior to register documents without the issue of a commission as required by the present law. These recommendations are probably deserving of consideration, but we think that the matter of them does not fall within the purview of our labours.

Ryots unable to acquire a right of occupancy in Behar in consequence of constant changes in the occupation of the fields cultivated by them.

§ 152. One of the greatest difficulties connected with the acquisition of a right of occupancy by ryots in Behar arises from the fact that, owing to causes originating in local practices, ryots seldom hold the same fields for twelve years continuously, and therefore, according to the strict letter of the present law, the right of occupancy does not accrue. The Committee say in their Report—

"The amalgamation and sub-division of holdings in Behar, taken in connection with the zemindar's failure to give pottahs, have made it difficult for ryots, who *de facto* have occupancy rights, to prove the existence of such rights. An examination of the *jamabandi* papers of Behar estates has shown that, while sixty per cent. of the present ryots have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Inasmuch as these ryots hold no pottahs or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could under the existing law prove their occupancy rights, even where these rights exist beyond all doubt. . . . . To remedy this evil we propose to make

more clear than it is at present the presumption of law that every resident ryot who has cultivated *any* land continuously in any estate for twelve years shall be held to have acquired occupancy rights in the whole of his holding in such estate. The effect of this presumption will be that on a ryot having proved continuous residence and cultivation of any land whatever in an estate for twelve years, the *onus* of proving that such ryot has not acquired occupancy rights in the whole or any particular part of his holding will be thrown on the zemindar."

We are satisfied that the above passage points to a serious defect in the present law, so far as Behar is concerned. The practice of periodically changing the fields cultivated by individuals is a very old one in India. It was followed by the old village communities, and we now know that periodical partition of the land belonging to the community was a very general custom in the ancient world, and that vestiges of it still remain even in the most civilized countries of modern Europe.[1] Even after the village community had ceased to exist as an institution, it was not uncommon for the cultivator, where land was abundant and population sparse, to abandon land which had been cultivated for two or three years, and the productive powers of which, unsustained by manuring or any system of rotation of crops, had thereby become diminished. As population presses closer on the land, this practice gradually ceases. Whether the state of things described as existing in Behar is a remnant of the old custom,[1] or is the result of some other cause, it is a special feature in the circumstances of this province which ought not to be overlooked in any new legislation intended to affect this part of the country. When Act X of 1859 enacted that "every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him", it overlooked and omitted to provide for a state of things peculiar to Behar, and we think that the proper course is to recognize this now and supply the defect. We propose to meet the difficulty by providing that all ryots who on a certain date (to be hereafter notified) are in possession of land other than *zerat* land, and have been for three years continuously in the possession of the same, shall have a right of occupancy therein, if they have for twelve years held *any* land in the same estate, or in any other estate which with it at any time formed a single estate (see section 81 of the draft Bill). We take the occupation of some land for twelve years to be an indication of intention to become a resident ryot, and in view of the peculiar state of things in Behar, we have cut down the period of occupancy from twelve to three years. These special provisions will apply only to the state of things existing on the particular date notified. The acquisition of a right of occupancy in the future is intended to be governed by the ordinary provisions of the Bill. It may, however, deserve discussion whether three years ought not in future to be held sufficient to confer a right of occupancy in Behar.

Definition of zerat land.

Ryot to have a right of occupancy in land received from his landlord in exchange for land in which he had a right of occupancy

§ 153. We have adopted the definition of *zerat* land recommended by the Committee, and taken from the definition of *sir* land in *The North-Western Provinces Rent Act, XVIII of 1873*. This, they think, will prevent any recurrence of a practice, said to be not uncommon in certain parts of Behar, of landlords violently wresting part of their lands from ryots, or of exchanging *ryoti* for *zerat* lands, and then entering both as *zerat* in the *jamabandis*. In order to provide for exchanges of land which may be made in future with the consent of the ryots, we have enacted (section 82) that when land is so exchanged a ryot shall have in the land which he gets in exchange the same right of occupancy which he had in the land given by him in exchange. If the land is exchanged against his will, he can seek redress in court.

Points upon which it is not thought desirable to make any difference the provision for Bengal and Behar

§ 154. We have attentively considered the recommendations of the Behar Committee upon the following subjects: The ejectment of ryots not having a right of occupancy; compensation to evicted ryots for improvements made by them; transferability of a right of occupancy; the right of occupancy-ryots to sub-let; amendment of the law of distraint; alteration and improvement of the law of enhancement; summary procedure for the recovery of rents; the settlement of rates by the Collector in cases of dispute; the instalments in which rent shall be payable; the measurement of lands by persons in receipt of the rent of the same; the insertion of boundaries and areas in plaints filed for the recovery of arrears of rent; and the deposit of rent by tenants, when a

[1] Mr. Dampier doubts the special applicability of these remarks to the state of things now found existing in Behar.

dispute exists as to the person entitled to receive such rent. The members of the Committee are not unanimous in the recommendation contained in their Report as to some of these matters; and indeed upon certain points, as, for example, the subject of procedure, individual members appear to have entertained opinions diametrically opposite. Most of the defects noticed in the existing law, in connection with these subjects, are common to Bengal and Behar; and we think that in amending the present law the two provinces may properly be treated alike. We therefore consider that the provisions to be found in the Bill on these points are suitable and sufficient to meet the requirements of Behar.

Recommendations of the Behar Committee in connection with the system of payment of rent in kind.

§ 155. In connection with the system of payment of rent in kind commonly prevalent in Behar, the Committee recommend—

1st—that in case of dispute as to the amount or value of the crop the Collector shall, on application from either party, depute a proper officer to make the division, estimate, or appraisement;

2nd—that the *danabundi* or appraisement papers shall be filed in the Collector's office within fifteen days after the appraisement;

3rd—that, where a tenant without due cause allows *bhaolee* lands to lie fallow, he shall be liable to pay a cash rent for such lands in respect of the period during which the land was fallow, such cash rent not to exceed that paid for the same description of land in the neighbourhood;

4th—that, where occupancy rights have been established, the occupancy ryot or the zemindar shall be entitled to commute *bhaolee* into cash tenures at the cash rates paid by other occupancy ryots in the neighbourhood, and, if cash tenures do not exist in the neighbourhood, at a cash rate equivalent to the average value of the zemindar's share of the produce calculated on the outturn of the preceding five years;

5th—that, where proportion of the produce to be taken by the zemindar is not specified in any written agreement, it shall be presumed that the zemindar is entitled to half and the ryot to half.

We have accepted the first and second of these recommendations in their entirety, and they will be found embodied in sections 84 and 85 of the draft Bill. District officers might be well asked if any similar provisions are required in Bengal. We are unable to concur in the third recommendation. We think it probable that the right of selecting the fields which he shall cultivate or leave uncultivated each year is one of the incidents which enables the ryot of South Behar to pay so high a rent as one-half of the gross produce for his land. With the information now before us, we are, therefore, not in a position to support this recommendation of the Behar Committee. The *fourth* recommendation we have accepted with a slight modification, and it will be found embodied in section 86 of the Bill. A majority of us think that the abuses incident to the receipt of rent in kind can best be obviated by its commutation into a money-rent, and that the option given to the people of so converting it is calculated to encourage agriculture.[1] Mr. Dampier is opposed to making commutation compulsory on the ryot.[2] We have also accepted the *fifth* recommendation as far as it goes, but we have gone further and have provided that in no case shall the proportion of the actual produce to be taken by the *zemindar* as rent be more than one-half.

Objects of legislation for Behar.

§ 156. It appears to us that the most important objects of legislation for Behar are to protect the ryots from illegal distraint, illegal enhancement, and illegal cesses; to enable them to maintain their rights of occupancy; and to suppress various modes of oppression incident to the collection of rent in kind, or in the commuted value of a share of the produce determined by an estimate or appraisement of the standing crop, or by some similar proceeding. We think that the special provisions for Behar contained in Chapter XII will, taken with the other provisions of the Bill, effectuate these objects as far as they can be effectuated by legislation.

Damages and penalties.

§ 157. The provisions of Chapter XIII as to damages and penalties require few observations, as they are substantially a re-enactment of the provisions of

[1] "Grain is the standard most familiar to the people, and therefore most likely to attain earliest accuracy and moderation; whilst its commutation for money prevents all the abuses incident to its receipt in kind; and the option left to the people to commute it, in perpetuity or periodically, affords every possible encouragement to agriculture."—*Mr. Campbell's Paper. Appendix to Report of Select Committee of* 1832, p. 56.

[2] Mr. Dampier's reasons are the same as those to be found in para. 7 of the letter of the Commissioner of Patna printed as a foot-note to § 146 of this Report.

the existing law. Damages may be awarded (1) for the illegal exaction of any sum of money in excess of the rent lawfully payable; (2) for withholding receipts for rent paid; and (3) for extorting payment of rent by duress. We have retained that portion of the law which empowers the courts to award damages not exceeding twenty-five per cent. upon rent not paid or deposited, when the tenant can show no reasonable or probable cause for having neglected to pay such rent. We have made it clear in accordance with the decisions, (*a*) that interest before decree upon the rent decreed may not be given in addition to these damages, and (*b*) that damages when awarded may, as well as the amount of rent and costs decreed, carry interest at the rate of six per cent. per annum until realized. We have also retained the existing provisions as to the court's awarding to defendants twenty-five per cent. by way of damages upon rent claimed without reasonable or probable cause, or sued for after it had been duly deposited in the Collectorate.

Limitation—Schedule of suits and application between landlords and tenants.

§ 158. We have collected in a schedule framed on the model of that annexed to *The Indian Limitation Act*, XV of 1877, the suits and applications between landlords and tenants, for which a special rule of limitation has existed since 1859, and we have made a few additions to the list. We have provided that one year shall be the period of limitation for a suit by a ryot against his landlord to recover the possession of a holding, from which such ryot has been illegally ejected by such landlord in any case not governed by section 9 of *The Specific Relief Act*, I of 1877; in other words, for a suit intended to try not merely the question of dispossession without consent, but also the question of title. For a similar suit by a tenure-holder or under-tenure-holder we have provided a limitation period of three years. We have enacted that every suit instituted and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. This is in accordance with the principle followed in the legislation of the Government of India.

Portions of *The Indian Limitation Act* especially extended to rent suits.

§ 159. We have expressly extended to suits and applications under the proposed Act the following portions of *The Indian Limitation Act*, XV of 1877, namely, (*a*) the explanation to section 4, *viz.*, that a suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue is filed; and in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator; (*b*) section 5 as to a suit or application, the period of limitation for which expires on a day when the court is closed, being admitted on the day that the court re-opens; and as to an appeal or application for a review of judgment being admitted after the period of limitation, when the appellant or applicant satisfies the court that he had sufficient cause for not presenting it in time; and (*c*) the whole of Part III relating to the computation of the period of limitation.

A special law of limitation for rent cases since 1859—Points in which it differed from the general law.

§ 160. Since 1859 there has been a special law of limitation applicable to rent cases. Before the passing of the present general Limitation Act, XV of 1877, this special law differed in some important particulars from the general law, namely,—

(1) contrary to the provisions of the general Limitation Act, when the period of limitation expired upon a day upon which the court was closed, no deduction of time was allowed and the suit might not be instituted on the day that the court re-opened:

(2) contrary to the provisions of the general Limitation Act, the time might not be deducted, during which a plaintiff was conducting with due diligence another civil proceeding founded on the same cause of action, and prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature was unable to entertain it:

(3) contrary to the provisions of the general Limitation Act, no deduction of time was allowed for legal disability, *i. e.*, minority, lunacy, idiocy:

(4) contrary to the provisions of the general Limitation Act, time was to be computed according to the English calendar:

(5) by a parity of reasoning to that upon which the above propositions are based, the provision of the Limitation Act, which in the

computation of the time allowed for appealing permitted a deduction of the time necessary for procuring a copy of the decree and judgment of the lower court, had no application to rent cases, although this time was deducted upon the authority of a circular order of the Sadr Court.

§ 161. Section 6 of the Limitation Act (IX) of 1871 enacted as follows:—"When by any law not mentioned in the Schedule hereto annexed and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is especially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law." Acts X of 1859 and VIII (B. C.) of 1869 are Acts not mentioned in the schedule here specified, and it was accordingly held that nothing contained in Act IX of 1871 affected these Acts; therefore the rules as to the computation of the period of limitation contained in Act IX did not affect or apply to rent suits. Section 6 of the present Limitation Act (XV of 1877), corresponding with section 6 of Act IX of 1871, is couched in different language, *viz.*,—"When by any special or local law now or hereafter in force in British India a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed." It has been held (I. L. R. 5 Calc. 110) that the effect of this change in the language used is that the rules prescribed by Act XV of 1877 for computing the period of limitation are applicable—apparently on the ground that rules for computing the period of limitation do not affect the period itself. If this decision is accepted as conclusive, it may be unnecessary to extend Part III by special words to rent suits, for the whole of this Part (*i. e.*, sections 12 to 25, inclusive) is concerned with the "computation of the period of limitation" as appears from the heading thereto. We have thought it safer, however, to follow the decision and enact this in express words. After due consideration we have come to the conclusion that it is inadvisable to extend to rent suits the allowance of time for disability. We think that a minor ought not to be competent on coming of age to sue a ryot for rent which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate; and that if the manager of a minor's estate neglects his duty of realizing rents as they fall due, the minor's remedy ought to be an action for damages against such manager.

Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent.

§ 162. We have provided (section 94) that when the result of litigation between any persons is such that they are found to stand in the relation of landlord and tenant to each other and to have stood in this relation while such litigation was pending, but, until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation. We invite criticism to this attempt to formulate a principle, not very susceptible of definite expression. The object we have in view will be rendered more intelligible by some reference to the cases concerned with the application of the principle. In *Rani Swarnamayi* vs. *Shashi Mukhi Barmani*, &c., (12 Moor. In. Ap. 244; S. C. 2 B. L. R. P. C. 10 the facts were—A *zamindar* had brought a *patni* tenure to sale under Regulation VIII of 1819. The *patnidar* was thereupon ousted and the purchaser took possession of the *patni* tenure. The *patnidar* then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the *patni* tenure together with mesne profits from the purchaser for the period of his possession. The *zamindar* subsequently sued the *patnidar* for rent for this period. Such rent was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held that it was not barred; that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived; that the *patnidar* on being restored to possession took back the estate subject to the obligation to pay the rent, and that the particular arrears must be taken to have become due in the year in which that restoration to possession took place. Two points are to be noticed here. *First*, the zemindar could not sue the patnidar for the rent as long as the latter was out of possession: *second*, the *patnidar* received mesne profit for the period for which rent was

claimed. From this case were distinguished some subsequent cases in which, although the landlord had denied the continuance of the relation of landlord and tenant and had attempted to put an end to such relation, the tenant was nevertheless not dispossessed, and there was in consequence nothing to prevent the landlord from recovering the rent. In these cases, although one element, *viz.*, receipt by the tenant of the profit of the land, was present, the other element, *viz.*, inability of the landlord to sue was wanting See I. L. R. 3 Calc. 6, 791, 817).

Summary sale for arrears of rent without decree. Incorporation of the Patni Regulation

§ 163. We now come to the Second Part of the Bill which contains the Adjective law or Procedure. The first Chapter of this Part, namely, Chapter XV, is concerned with proceedings to enhance the rent payable in money by ryots having a right of occupancy or by tenure-holders or under-tenure-holders. We have already fully considered these provisions in discussing the subject of enhancement, this being more convenient than to deal with them in the order of the arrangement of the Bill. Chapter XVI treats of the recovery of arrears of rent in certain cases by summary sale without decree, and is, in fact, a re-production of the Patni Regulation VIII of 1819. The original language of the Regulation has been retained as far as possible, and this will account for some difference in the form of expression between this Chapter and the rest of the draft Bill. Some alteration of the arrangement of the matter has been necessarily made, and some additions have been made, incorporating the result of the decisions upon important questions raised upon the Regulation. As the law now stands, this procedure can be used only by "proprietors" of revenue-paying estates and in respect of *patni tenures and other tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of such tenures.* Whether this procedure should be extended to other tenures, or to under-tenures and even occupancy holdings, is a question which may deserve consideration Some of us have suggested a certain extension, but the majority are opposed to putting this summary procedure into the hands of any other than the superior landlords. The tenure-holders to whom the law now applies are persons of means, able to vindicate their own rights, if unjustly infringed. The proprietors of revenue-paying estates, who may use the law, are persons of substance, against whom a decree for damages can be effectually enforced. It is extremely rare to hear even the allegation that a tenure has been brought to summary sale without arrears being *bonâ fide* due; and the invariable ground upon which it is sought to set aside these sales is irregularity in the publication of the notices This publication, it may be observed, generally depends upon men of subordinate position, not very accurate in transacting business and not generally supposed to be above corruption. So far as these summary sales depend upon the acts and volition of the landlords, there is little reason to suppose that the procedure is abused. There may be grave doubts whether the result would be equally satisfactory if the same procedure were entrusted to petty landlords to be put into operation against tenants not always in a position to avail themselves of the aid of the law against oppression.

Question of extending this procedure to other tenures and under-tenures, &c

§ 164. According to the Regulation—and we have made no change in the Bill—these summary sales take place twice a year, namely, on the 1st Jeyt and on the 1st Aghan. Application for sale is made on the 1st Baisakh and on the 1st Kartik. If these dates happen to fall on a holiday, there is no express provision that the application may be made, or that the sale may take place upon the next open day. We have not inserted any such provision in the Bill, because no case has occurred within our experience, or has been brought to our knowledge, in which hardship has resulted from the want of it. We invite attention to the point, however, as for reasons, which are not before us, it may be desirable to have a precise rule on the subject. The only change which we have made in the provisions of the Panti Regulation is that we have allowed the defaulting tenure-holder whose tenure has been advertized for sale to lodge the amount of the arrear in the Government Treasury up till sunset of the day preceding the advertized day of sale. Under the law as it now stands, the Collector is not bound to receive the arrear of rent except in two cases, *viz.* (1) when the defaulter has applied for a summary investigation (see section 137 of the draft Bill); (2) when an under-tenure-holder

Is provision required when day of application or day of sale falls on a holiday?

Amount of arrear may be lodged in the collectorate before sunset of the day preceding day of sale

desires to pay the amount in order to prevent the sale and protect his under-tenure from the risk of being avoided (see section 138 of the draft Bill). In these two cases the amount of the arrear may be deposited on the day of sale and at any time before the time of sale. It has, however, happened that the amount has been deposited in the Collectorate in cases other than the above; and that the person who so deposited it was under the impression that he had thereby prevented the sale of his tenure; whereas, in fact, he had not done so, inasmuch as the money should have been paid to his landlord, and a deposit in the Collectorate was no legal bar to the sale. In the particular case to which we allude the tenure was sold and the tenure-holder had no remedy. We have thought it advisable to prevent the possibility of a recurrence of this hardship by allowing the amount of the arrear to be lodged in the Collectorate in every case. We have at the same time cleared up a point, as to which there has been some doubt, by declaring that the money must be paid to the landlord or lodged in the treasury (in cases other than the two exceptional cases just stated), *before sunset of the day next preceding the day of sale*, otherwise that the sale shall not be stayed or postponed.

Save where Bill otherwise provides, Code of Civil Procedure to apply to suits between landlords and their tenants or agents

§ 165. Chapter XVII contains certain special rules of procedure applicable to suits between landlords and their tenants or agents. It is declared (section 147) that, save where the Bill otherwise provides, *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and (section 148) that the cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the civil court, which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties. This latter provision proceeds upon the lines of the present law. We have retained the existing provisions as to *surbarakars* and *tehsildars* suing and being sued, and have extended them to managers under the Court of Wards; but we have provided (section 149) that all such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or in the names of the private persons to whom the estates belong. We have also retained the provision of the existing law as to *naibs* and *gomashtahs*, if specially empowered thereto, acting as the authorized agents of their employers, although such employers are resident within the local limits of the court's jurisdiction. We think that the facility thus afforded to landlords is a reasonable one, which should not be taken away. At the same time we have thought it equally reasonable to provide in the interest of the ryots that the service of any notice under the Act upon any such naib or gomashtahs, or the tender to him of any money or fee, shall be as valid a service or tender as if the service had been made upon, or the amount or fee tendered to, his employer (section 150).

Sarbarakars and Tehsildars.

Naibs and Gomashtahs

Suit for the determination of the conditions of a tenancy.

§ 166. We have already (*ante* § 8) stated the reasons which have influenced us in doing away with suits for pottahs and kabuliyats, and substituting therefor a simple suit for the determination of the conditions of the tenancy. Either landlord or ryot may sue for the determination of all or any of the following matters:—*(a)* the quantity of land held by the ryot; *(b)* the amount of annual rent payable for such land; *(c)* the class to which the ryot belongs (section 156). The plaint must contain the plaintiff's allegation as to each of these matters, this being necessary for purposes of pleading and for determining the party on whom the burden of proof shall lie. We have provided that no suit shall be dismissed because the plaintiff fails to prove exactly the allegations made in his plaint. The necessity of proving the exact terms of the *kabuliyat* has destroyed the efficacy of a suit for a *kabuliyat* under the existing law; and we desire to prevent the mofussil courts from the error of perpetuating this result. Whatever may be the allegations in the plaint, the court shall proceed to ascertain and declare the actual facts of the tenancy.

Ejectment for non-payment of rent

§ 167. The provisions as to a claim for ejectment being included in a suit for arrears of rent or being based upon an unexecuted decree for arrears, and as to a stay of ejectment, if the decree for arrears is satisfied within fifteen days, are taken from the existing law; but we have appended two *explanations* which embody the results of the decided cases: *first*, that the judgment-debtor is entitled to the benefit of this fifteen days' rule, even though the lease

contains a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent; *secondly* that if the original decree is *altered or amended* on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review; but if not altered or amended, then from the date of the original decree (section 152). We have made no change in the provisions of the present law as to immediate execution in certain cases of ejectment, and as to execution not being stayed pending appeal in such cases (sections 155, 156).

Suits for abatement of rent in what courts to be brought.

§ 168. An occupancy ryot is entitled to abatement of rent under the provisions of section 25, and a ryot who has held for more than three, but less than twelve, years is entitled to claim abatement under the provisions of section 31. We have provided (section 153) that suits for abatement of rent brought by ryots of these two classes, or, in other words, by any ryot who has held land for more than three years, may be instituted (*a*) when abatement is claimed on the first or second ground specified in section 25 in the civil court or before the Collector; (*b*) when abatement is claimed on the third ground specified in the same section, before the Collector only: provided that no such suit shall be instituted before the Collector unless at least ten ryots join in bringing it. We have allowed ten or more ryots to join in suing for abatement of rent, if they all pay rent to the same landlord, even though their holdings are separate. These provisions are the counterpart of the provisions as to enhancement. When abatement is claimed on account of diminished powers of production or diminished price of produce, the causes in operation affect a certain number of persons, and efficiency of decision, as well as economy of judicial agency, are obtained by the cases being tried together. Suits for abatement brought by tenure-holders, under-tenure-holders, and ryots holding at fixed rates of rent are to be instituted in all cases in the civil court. Abatement cases before the Collector are to be governed by the provisions of Chapter XV so far as they are applicable. Abatement cases in the civil court will be governed by the provisions of *The Code of Civil Procedure*.

Procedure

When execution may be had against the person or against movable or immovable property.

§ 169. We have retained (section 154) the provision of the existing law that process of execution may not be issued simultaneously against person and property; but, subject to the rule that a tenure, under-tenure or occupancy holding must be brought to sale before any other process of execution can be obtained, we have allowed execution to issue against movable or immovable property, or both, thus altering the present practice under which execution can be had against the immovable property of the judgment-debtor only if satisfaction cannot be obtained against his movables. The first provision tends to prevent harassment, more especially in the case of ryots whose incarceration in a civil jail prevents them from cultivating their lands. If they have movable or immovable property which can be made available to satisfy the decree, imprisonment serves no useful purpose, and is in practice seldom resorted to. If they have property which they have concealed, imprisonment occasionally brings about a settlement. If they have no property, they can, if imprisoned, apply to be declared insolvent. As to the second point, we see no reason why any distinction should be made between judgment-creditors for rent and other judgment-creditors in respect of their being permitted to proceed against movable and immovable property indiscriminately.

No appeal from District or Additional Judge when value of suit does not exceed one hundred rupees, and no question of title has been decided.

§ 170. We have left the law of appeal in its present state, declaring that nothing in the Bill shall be deemed to alter the law as established by Act X of 1859 so as to confer a right of appeal in any suit tried and decided by a District Judge or Additional Judge originally or in appeal, wherein the amount sued for or the value of the property claimed does not exceed one hundred rupees, if no question of right to enhance or vary the rent of a ryot or tenant, or no question relating to title to land or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment in such suit section 157). We do not consider it desirable that any alteration should be made in the law, and we have here simply reproduced section 102 of VIII (B.C.) of 1869, the enactment of which has been decided by a Full Bench of the High Court not to be beyond the powers of the Bengal Council (I.L.R., 3 Calc. 151). The words "or Additional Judge" have been inserted in accordance with the decision of the High Court that a District Judge and an Addi-

tional Judge stand in the same category as regards these appeals (13 B. L. R. 376).

Suits against agents for money or accounts or papers—Law made applicable to all agents.

§ 171. We have made some important changes in the law concerned with suits against agents for money or accounts or papers. We have, in the first place, extended these provisions so as to include not only agents who collect the rents from the tenants, but also agents who receive the rents so collected and account for them to the landlord. In large estates it is very usual for one set of *amlah* to collect the rents in the *mofussil*, while another set at head-quarters keep the accounts, receiving the rents from those who collect them and retaining them in a treasury for disbursement as required. There has been some doubt as to whether the special provisions of the present law extend to this latter class of agents, and we have thought it desirable to remove this doubt, and make the procedure applicable to agents employed by landlords in the collection or *receipt* of rents, or the management of land. The present law speaks of "suits for the delivery of accounts", and it is not quite clear what is meant. In some cases judicial officers think it sufficient to give a decree for the annual delivery of certain accounts, *e. g., jama-wasil-baki, baki-jai, &c.*, and consider it a sufficient compliance with this decree if these accounts be handed into court. The landlord has then to find out as best he may whether they are correct or not; and, if he can prove them to be incorrect, he has to bring a second suit for the recovery of the money which is owing to him upon correct accounts. It is clear that this is a very unsatisfactory method of obtaining a remedy. In other cases the suit is valued at some imaginary sum, say, Rs. 500; and a decree is made for the delivery of the accounts *or* the payment of this sum, if they are not delivered, no attempt being made to ascertain if, on taking a proper account, this sum would be really due from the agent.

Unsatisfactory nature of the remedy afforded by the law in its present state.

Remedy provided for two classes of cases: (1) where landlord knows what money or papers he ought to receive: (2) where, in consequence of agent not accounting, he does not know.

§ 172. We have endeavoured to make the remedy simple and effectual. There are, we conceive, two classes of possible cases: *first*, where the landlord knows the exact sum of money, or the specific accounts or papers which his agent ought to make over to him; *second*, when in consequence of the agent not having accounted, the landlord is unable to tell what amount has been received and is to be accounted for. The first case may easily occur where there are a few tenants, each paying a considerable amount of rent. The landlord knows what documents connected with their tenancy are in the hands of his agent, and can easily ascertain from his tenants the sums paid over by them to the agent. The second case ordinarily happens when there are a number of small tenants paying each an inconsiderable sum as rent, and it would be extremely difficult to ascertain from each the exact state of his account. In many instances an illiterate ryot is himself unable to say how he stands, and he trusts entirely to the *zemindari amlah* and their accounts. Then, again, the agent may be charged with all the disbursements connected with the collections, and, until these have been correctly ascertained, it may not be possible to say what balance is due to his employer. In the first of these cases the landlord is required to state in his plaint the exact sum of money which he claims, or to describe the accounts or papers which he demands, from his agent.

Procedure in the first class of cases.

Procedure in the second class of cases

§ 173. The second case is not so simple. We here require the landlord to set forth in his plaint the fact that he is unable to ascertain the exact sum of money or the papers, vouchers or other documents in the hands of his agent, in consequence of such agent having neglected or refused to render proper accounts, and to pray the court that it will take an account from such agent and make a decree for the payment of such sum of money (if any) as may upon the taking of the account be found to be due and owing to the plaintiff, and for the delivery of such papers, vouchers or documents belonging to the plaintiff as may be found in the hands of the agent (section 161). Upon the filing of this plaint a summons issues to the defendant calling upon him to shew cause why he should not render a full and satisfactory account of all sums received and disbursed by him, and of all papers, vouchers or other documents which may have come into his hands in the discharge of his duties as agent (section 162). If the defendant fails to show cause, or does not, in the opinion of the court, show sufficient cause why he should not render such an account, the court shall make an order requiring him to file such account in court, and shall fix a day on or before which such account shall be filed. This order, if disobeyed, may be enforced by imprisonment or by attachment of property or by

both (section 163). When the defendant files the account the plaintiff is to be allowed a reasonable time to examine it, and make objections, if he has any such to make. The court will then fix a day for hearing and determining such objections, and will make its decree accordingly.

Abbreviated procedure for rent suits —Dangers of a so called summary procedure.

§ 174. We now come to Chapter XVIII, which contains the abbreviated procedure which we have been able to devise for rent suits. If this procedure appears to any persons less summary than they could wish, and if on this account objections are advanced against it, we can only in reply state our earnest conviction of the extreme danger of summary methods of justice. In order that justice may be done, truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a "regular suit" to right himself, if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice but of choking off litigation, and we cannot recommend the adoption of any summary procedure for rent suits which would involve even a partial renewal of it.

Classes of suits to which the new procedure is made applicable

§ 175. At the same time there are, we think, certain classes of rent suits, to the decision of which full justice can be done by a system of procedure shorter than the elaborate code now in force for ordinary civil suits, and such a system we have endeavoured to devise. The classes of suits to which we think this procedure can be applied with advantage are—

(1) suits for the recovery of arrears of rent;
(2) suits for ejectment;
(3) suits to recover possession of land;
(4) suits for damages on account of the illegal exaction of rent or cesses, or on account of the refusal of receipts;
(5) suits to compel the registration of successions to, or transfers of, tenures, under-tenures or occupancy holdings.

§ 176. The points of difference between *The Code of Civil Procedure* and the procedure proposed for the above classes of rent-suits, or in other words, the particulars in which the former procedure has been abbreviated, are as follow:—

Certain portions of The Code of Civil Procedure not extended

First.—The following portions of *The Code of Civil Procedure* do not extend to rent suits at all, *viz.*, the sections relating to discovery, inspection, interrogatories and affidavits; sections 380-382 as to security for costs; sections 401-415 as to suits by paupers; sections 430-434 as to suits by aliens and by and against foreign and Native rulers; sections 470-476 as to interpleader; sections 503-505 as to receivers; sections 506-526 as to arbitration; sections 527-531 as to proceedings on the agreement of parties; sections 532-538 as to negotiable instruments; and section 529 as to public charities.

Summons to be for final disposal

Secondly.—The summons is to be in all cases for the final disposal of the suit, which is ordinarily to be disposed of at the first hearing (section 173). We have laid down (section 188) precise rules as to the cases in which an adjournment may be allowed. To deny an adjournment would be in some cases tantamount to a denial of justice, but such cases are exceptional; and, if the subordinate courts will do their duty and District Judges see that they do it, we are satisfied that over 90 per cent. of rent suits can be properly disposed of at the first hearing.

No written pleadings

Thirdly.—No written pleadings are required, save that the defendant may, if he desires, file a written statement of his defence (section 184).

Early and effectual ascertainment of facts and documents disputed

Fourthly.—We have provided (section 190) that the court shall upon the day of hearing ascertain from each party whether he admits or denies the allegations of fact and the documents of the opposite party, and shall record such admissions or denials. We believe that this course will in very many cases considerably reduce the quantity of evidence that has to be taken, and in some cases do away with the necessity of taking evidence at all. It is too much the habit with subordinate judicial officers to leave the case in the hands of the parties in its earlier stages, rousing their own attention fully only when they come to write their judgment. Facts and documents, which would be readily admitted at the first appearance before the court, thus come to be strenuously denied, when the parties understand their bearing, are excited by the contest, advised by unscrupulous mukhtars and eager for victory regardless of the means by which it is obtained. The proceedings are thus prolonged and the time of the court wasted in taking evidence which ought to have been unnecessary.

Abbreviation of the record of the evidence

Fifthly.—We have provided (section 192) for making a memorandum of the evidence sufficient to give the gist and substance of what is said, but requiring less time to record than if the whole of what each witness says were taken down at full length, as must be done under the provisions of *The Code of Civil Procedure* in all appealable cases. Any particular question and answer may, however, be taken down by the Judge if he thinks fit (section 193).

Avoidance of complicated questions of title

Sixthly.—We have enacted (section 169) that the court shall not add as a party a person setting up a title adverse to the plaintiff or defendant in respect of the subject-matter of the suit; but any question of title, disputed between any such person and a party to the suit, may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit. There is no greater source of delay in the decision of rent suits than the raising of complicated questions of title and making the decision of the court thereupon final and conclusive. Thus, in a suit brought to recover a few rupees of rent, the title to property worth a thousand rupees may be litigated, to the great detriment of the stamp revenue. It sometimes indeed happens that the decision of such a question is necessary in order to the decision of the rent suit. Where this is the case it may be tried and decided, but the decision will not be a bar to the formal trial of the same question under the provisions of *The Code of Civil Procedure* (section 223).

Limitation of appeal

Seventhly.—We propose to take away appeals in suits brought for arrears of rent in which the amount claimed does not exceed *ten* rupees, and in which no question of right to enhance or vary the rent of a tenant has been determined.

Safeguards under which it is proposed to take away the right of appeal in petty cases.

§ 177. With respect to the last point, we are opinion that the right of appeal in petty cases for the recovery of arrears of rent may well be taken away. Well aware as we are of the ideas of the people on the subject of appeal and the general dislike to the final jurisdiction on the Courts of Small Causes, we have provided two safe-guards for the class of cases in which we propose to take away the right of appeal: *First*, this final jurisdiction is to be exercised only by selected officers specially empowered by the Lieutenant-Governor; *secondly*, the District Judge is invested with a power of supervision which he can exercise, when satisfied that a failure of justice has been caused by a substantial defect or irregularity in the proceedings or in the decision.

Sections of *The Code of Civil Procedure*

§ 178. The Code of Civil Procedure, as amended by Act XII of 1879, contains 663 sections. Of these 393 have been extended to rent suits. The

sections extended are the following; 13, 19, 25, 27, 32, 36 to 41 inclusive, 45, 49, 52 to 57 inclusive, 59, 60, 62, 63, 66, 67, 69, 72, 73, 74, 77 to 88 inclusive, 91 to 103 inclusive, 105 to 109 inclusive, 111, 137 to 144 inclusive, 157 to 169 inclusive, 171 to 178 inclusive, 186, 188, 191, 193, 199 to 203 inclusive, 205, 206, 210, 216, 219 to 228 inclusive, 230 to 234 inclusive, 236 to 254 inclusive, 257, 257*a*, 258, 266 to 304 inclusive, 306 to 319 inclusive, 326 to 379 inclusive, 383 to 395 inclusive, 397 to 400 inclusive, 416 to 429 inclusive, 435 to 469 inclusive, 480, 482 to 491 inclusive, 540 to 591 inclusive, 623 to 630 inclusive, 640 to 645 inclusive, 648, 651 and 652. It may be observed that the use of many of these sections, though necessary at times, will be extremely rare in the trial of rent cases. In order to make the Procedure Chapter as simple and as easily workable as possible, two devices have been adopted in extending these sections of *The Code of Civil Procedure* to rent suits: *First*, the reference to the sections extended in connection with any point is inserted in the particular place in which the operation of these sections is required, *e. g.*, the sections of the Code relating to the service of summons on the defendant will be found in section 174 where provisions as to such service are required; *secondly*, the reference to the sections of the Code gives the marginal note of each or a sufficient description of its contents to enable the judicial officer who has to use it to turn to the right section at once without any risk of making a mistake. Sections especially extended to rent suits.

§ 179. There are a few other points connected with the proposed procedure, which may usefully be noticed. And first it may happen that in an important rent suit it would be very expedient that one of the parties should be able to make use of some of those portions of *The Code of Civil Procedure* which we have not extended, *e. g.*, inspection or discovery. We have therefore empowered the District Judge, upon application made, to direct that any particular suit shall be tried under the provisions of *The Code of Civil Procedure*, and upon such order being made the whole of such provisions shall be applicable to the trial of such suit. District Judge may direct that any particular suit be tried under the provisions of the Code of Civil Procedure.

§ 180. We have provided (section 167) that the plaint shall, amongst other particulars, in suits concerned with tenures, under-tenures, holdings or land, set forth the extent, situation, designation and boundaries of the same, or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification. We have required the same particulars to be inserted in the decree section 195, clause (*c*). According to section 45 of *The Code of Civil Procedure* a plaintiff may join in the same suit several causes of action against the same defendant or the same defendants jointly. Claims for arrears of rent of two or more tenures, under-tenures or occupancy holdings may therefore be joined in the same suit; but as each is liable and must be brought to sale for its own arrears only, we have required the decree in any such case to show separately the arrears decreed in respect of each tenure, under-tenure, and occupancy holding section 195, clause (*d*). Contents of plaint and decree.

§ 181. We have substantially adopted the provisions of Act X of 1859 as to the arrest of the defendant before judgment (sections 175 to 179); but we have not allowed such arrest in suits for arrears of the rent of a tenure, under-tenure or occupancy holding hypothecated for its own rent under the provisions of section 64. The defendant can be arrested only if resident within the district in which the court is held, and if the court is satisfied (*a*) that there are *primâ facie* grounds for believing the claim to be well-founded, and (*b*) that if a summons be issued in the first instance, such defendant will abscond. If an arrest be obtained on insufficient grounds, the defendant will be entitled to compensation. Arrest before judgment allowed in what cases and with what limitations.

§ 182. We have extended to rent suits the provisions of *The Code of Civil Procedure* as to attachment before judgment. These provisions will in certain cases form a useful and legitimate substitute for distraint, enabling the plaintiff to attach the defendant's crops through the court. We have provided, however, that in suits for arrears of the rent of a tenure, under-tenure or occupancy holding hypothecated for its own rent, there shall be no attachment before judgment, unless the plaintiff can satisfy the court that such arrears, together with interest and costs, are not likely to be satisfied by the sale-proceeds of such tenure, under-tenure or occupancy holdings (section 180). We have enacted that standing crops and other ungathered products which have been so attached, may, Attachment before judgment allowed in what cases and with what limitations.

notwithstanding such attachment, be reaped and gathered by the defendant, and stowed in such granaries or other places as are commonly used by him for the purpose; and, if the defendant neglects to do so, the plaintiff may cause such crops or products to be reaped or gathered and may store them in such granaries or places, or in some other convenient place in the neighbourhood. We have also provided for an *ad interim* sale of crops or products which would deteriorate if kept (section 181).

Ryots' implements of agriculture, plough, oxen, and houses may not be taken in execution.

§ 183. The result of extending section 266 of *The Code of Civil Procedure* to rent suits is that the following movables cannot be taken in execution :— *a*) the necessary wearing apparel of the judgment-debtor, his wife and children ; (*b*) implements of husbandry and such cattle as may, in the opinion of the court, be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist; (*c*) the materials of houses and other buildings belonging to and occupied by agriculturists. It may be observed that these are not exempted from attachment in execution under the provisions of Act X of 1859, so that in those districts in which this Act is in force judgment-debtors under decrees for rent are placed at a considerable disadvantage in this respect.

Hardship of avoiding sub-leases and incumbrances upon the sale of a tenure for arrears of rent.

Provisions of the Bill for preventing this hardship.

Payment into court of the amount of the decree by persons likely to be endamaged by sale.

§ 184. The principle borrowed from the revenue sale laws of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent sometimes works great hardship to innocent persons. It appears to a majority of us very desirable to prevent this hardship if possible; and we have devised certain means which we hope will successfully accomplish this object. We have provided (section 205) that when a tenure or under-tenure is notified for sale, the amount of the decree and costs may be paid into court by any one who has an interest which would be endamaged by the sale of such tenure or under-tenure free of incumbrances. The amount so paid may be recovered as money lent from the person in consequence of whose default to pay rent the tenure or under-tenure was notified for sale.

Object of avoiding incumbrances upon a sale to secure the landlord's rent.

§ 185. The object of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent is that the superior landlord's security for his rent may not be impaired. If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor of whom he holds his tenure, if the tenure, subject to these sub-leases and incumbrances, will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder, it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder—such is the common law of the country. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exercise of this right or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub-leases and incumbrances be avoided, which have rendered the remaining interest of the tenure-holder an insufficient security for the rent payable by him.

This object not defeated if claim for rent satisfied by sale of tenure subject to incumbrances.

Bill provides that tenure shall first be put up to auction subject to incumbrances, and if bidding does not reach an amount sufficient to satisfy decree, a sale may then be had free of incumbrances

§ 186. In this view of the matter we have enacted (sections 203, 206) that a tenure, under-tenure or occupancy holding about to be sold in execution of a decree for arrears of its own rent, shall first be put up to auction, subject to certain incumbrances, and if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted upon some conspicuous place upon the land of the tenure. The effect of these provisions will be that persons who hold sub-leases and incumbrances will not be endamaged if the bidding on the first sale day reaches an amount sufficient to satisfy the decree, and the tenure is in consequence

sold subject to incumbrances. If, on the other land, the bidding on the first sale day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree (which they can subsequently recover from the defaulter) and so preventing such a sale of the tenure as will avoid incumbrances.

Protection afforded only to registered incumbrances, of which superior landlord had notice.

§ 187. It has appeared to us that the superior landlord ought to have notice of the creation of the incumbrances to which the above protection is afforded, and that this protection ought not to be extended to all incumbrances indiscriminately. We have accomplished this by defining the term "incumbrances" to mean and include every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure, under-tenure or occupancy holding was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, a copy of such instrument being served upon the person to whom the rent of the tenure, under-tenure or occupancy holding is payable. This provision will, we trust, prevent fraud, if sought to be accomplished by setting up sham incumbrances after the sale. It will also enable an intending purchaser to ascertain the real value of property about to be sold, and he will probably bid more than if he was in a state of uncertainty on this point. We have provided for incumbrances created before the commencement of the Act by instruments in writing duly registered under the law applicable to them, by allowing a copy of any such instrument to be served within six months after the commencement of the Act. Mr. O'Kinealy would extend the same privilege to *unregistered* incumbrances created before the Act, which were not required to be registered by any law in force at the time of their execution; but a majority of us are apprehensive lest this might induce some persons to set up incumbrances fabricated for the purpose.

Purchaser entitled to avoid all except registered incumbrances, unless superior landlord give written power to create.

§ 188. With the exception of these registered incumbrances, of the creation of which the superior landlord has had notice and which are protected in the case of a sale of the tenure subject to incumbrances, a purchaser will be entitled to avoid and annul all incumbrances imposed upon the tenure by any holder thereof, his representatives or assignees, unless in the case of incumbrances allowed by law, the right of creating the same was expressly granted by the written engagements under which the tenant was originally let into possession, or by the subsequent written authority of the person who let him into possession, or of the representatives or assignees of such person (section 210). *Khudkasht* ryots or resident and hereditary cultivators are not, however, liable to ejectment under this rule; nor can a purchaser cancel *bonâ fide* engagements made with them, unless he can show that a higher rent would have been fairly demandable at the time when such engagements were contracted; he may, however, proceed under the provisions of the Act to enhance the rents of all other ryots. We have provided in accordance with a decision of the Privy Council that the judgment-debtor himself or any person acting in fraudulent collusion with him for the purpose of disencumbering the tenure shall not be entitled to avoid incumbrances.

Khudkasht ryots not liable to ejectment.

Court may set aside, sale when.

§ 189. The only other portion of the procedure to which we think it necessary to make special reference is that relating to setting aside sales. The court may set aside a sale if (*a*) material irregularity in publishing or conducting it, and (*b*) substantial injury caused thereby are proved, and not otherwise (section 212). When a sale is ordered to be set aside we have provided that the order shall direct the purchase-money to be refunded, with or without interest as the court may see fit: and that such order may be enforced as a decree for money against any person into whose hands the purchase-money or any portion of it may have passed, if such person has been served with notice of the application to have the sale set aside. This will prevent the hardship to a purchaser of having to bring a suit for the recovery of his money after he has lost the benefit of his purchase.

When sale set aside, order to be made for refund of the purchase-money.

The Bill not larger than the subject requires.

§ 190. The draft Bill which we have the honour to submit with this Report contains 225 sections, some of which are of considerable length, being sub-divided into two or more sub-sections. Having regard to the extent of the matter and the importance of the subject with which we have had to deal, we do not think that a Bill codifying the statute-law and the case-law concerned with landlords and tenants in these provinces can be compressed into

much less space. We propose to repeal, in whole or in part, seven Regulations of the Bengal Code, four Acts of the Bengal Council, and four Acts of the Supreme Council. The seven Bengal Regulations contain 37 sections, some of which (specially in the Patni Regulation) are longer than any sections of the Bill; Act X of 1859 contains 168 sections; Act VI (B. C.) of 1862 contains 19 unrepealed sections; and Act VIII (B. C.) of 1865 contains 17 unrepealed sections. These four make a total of 241 sections, or more than the number of sections in the Bill. Again, Act VIII (B.C.) of 1869, which does not include procedure governed by *The Code of Civil Procedure*, contains 111 sections. The draft Bill includes—

	Sections.
Substantive Law	94
Enhancement Procedure	38
Summary Sale Procedure	14
Procedure for recovery of rents, &c.	79
Total .	225

The North-Western Provinces Rent Act, 1873, contains 212 sections; and an Amending Bill, now before the Council, contains 29 sections = total 241. We have briefly adverted to these facts, because one of our colleagues expresses a hope that if the Bill be brought into Council it will be made "simple and practicable by cutting out half the sections and sub-sections and all the illustrations and explanations". He adds—"We know by experience that illustrations and explanations too often fail in their object, and, instead of elucidating, raise new and unforeseen difficulties and doubts as to the meaning of the text." The majority of us have not this knowledge, and, until we read this passage, were not aware of its existence. Our own experience has differently informed us. The illustrations and explanations in the Penal Code have, we believe, prevented many misconstructions of the text. Whatever difference of opinion there may be as to the utility of illustrations and explanations constructed from hypothetical cases, we concur with the modern masters of law-making, who set much value upon illustrations and explanations taken from cases which have actually occurred in practice.

Too much must not be expected from a measure of this kind

§ 191. In concluding the task which has been entrusted to us, and the difficulty of which may be fairly postulated without the appearance of magnifying our duties, we indulge no undoubting confidence that, if the Bill which we have framed becomes law, it will ensure to the rural community of these provinces a paradise of agricultural peace and prosperity, undisturbed by litigation and untroubled by famine and all the accidents to which the husbandman's life is especially subject in this country. In many recommendations we all concur, who have had different experiences in different districts and in different departments of the public service. Where our views have differed we have felt ourselves justified in accepting, after discussion, a compromise which offers violence to the opinions of none. We very earnestly trust that good will come of our labours, but time and experience alone can show whether the hope will be realised. If it be beneficial that men's rights and duties be certain and definite, benefit ought to accrue from the collection in a single Act of all that concerns the rights and duties of landlords and tenants: and many provisions, such, for example, as those relating to merger and those concerned with coparceners, introduce exact rules where much doubt and consequent litigation have prevailed. In the interest of the cultivating class we have afforded protection from arbitrary and excessive enhancement of rents; we have defined the incidents of a right of occupancy and have made it a valuable property in the hands of a careful tenant; we have provided reasonable instalments of rent and secured the evidence of payment; we have restrained the harassment of honest tenants when their landlords are coparceners and cannot agree; we have given the evicted tenant the crop on the ground sown by himself, and have allowed him compensation for any improvements which he may have made; and, finally, we have endeavoured to raise the standard of comfort by allowing the ryot to build himself a comfortable habitation, and by giving him some share in the material progress of his country.

Provisions in the interest of Tenants.

Provisions in the interest of landlords.

§ 192. In the interest of the landlord we have provided rules for the registration of transfers of, and successions to, tenures, under-tenures and occupancy

holdings ; we have allowed the tenant to be ejected who disclaims his landlord's title, a valuable sanction in a country where the person who sets up a hostile title too often hopes to support it by suborning to his side the tenants of the person in possession ; we have provided definite rules for the enhancement of the rents of tenure-holders and under-tenure-holders ; and for the purpose of a reasonable enhancement of ryots' rents we have placed the executive agency of Government at the disposal of the zemindar, and have put him in as good a position as Government itself for the achievement of this object. Finally, we have provided the auction-purchaser, who represents an important landholding interest in this country, with the means of realising the profit of capital invested in land. This ought to increase the value of landed property, and so benefit the landholding community. We believe that the advantages offered by the Bill to landlords are a full equivalent for anything proposed to be given to the ryots. If any think otherwise, we desire to remind them of how much more, in the opinion of some, the ryots are entitled to demand. As to the power of the Legislature to re-distribute property in land at any time, when such a re-distribution is required in the interests of the entire community, there can be no doubt. If such a re-distribution has for its immediate result the impairment of existing interests, compensation is usually given by civilized Legislatures ; and we are of opinion that this rule should prevail, if anything contained in the draft Bill constituted a case to which the rule can be applicable. The majority of us desire, however, to say very emphatically that in our opinion nothing contained in the draft Bill constitutes such a case ; and that all its provisions, so far as they propose to benefit the ryots, fall well within the power expressly reserved by the conditions of the Permanent Settlement—the power, that is, reserved to the Governor General of enacting, whenever he might deem it proper, such Regulations as he might think necessary for the protection and welfare of the dependent talukdars, ryots and other cultivators of the soil.[1]

* H. L. DAMPIER, *President.*

C. D. FIELD.

A. MACKENZIE.

J. O'KINEALY.

* MOHINI MOHUN ROY.

* PEARY MOHUN MOOKERJEE.

BROJENDRO KUMAR SEAL.

The 19th June 1880.

Remarks by MR. DAMPIER.

§ 1. CHAPTER XV of the Bill treats "Of proceedings to enhance the rent payable in money by ryots having a right of occupancy". The sections of this Chapter, as they stand drafted, provide for the landlord, who has a permanent transferable interest in the land, new facilities for enhancing the rent of his occupancy ryots by a procedure before the Collector. If he wishes to enhance on the first, second or third ground mentioned in section 22, they give him the option of proceeding either before the civil court as hitherto, or before the Collector according to the new procedure; if on the fourth ground (rise of prices), he can proceed before the Collector only.

§ 2. If is supposed that where the landlord wishes to proceed against a few ryots only he will elect the civil court. I see no reason for assuming this. If the new procedure before the Collector becomes popular with landlords, they will probably elect it even for isolated cases. This would be going beyond the object of the present remedial measure, which is to provide a special means for enabling the landlord to overcome the resistance which is offered by combinations of ryots, it having been found that when ryots so combine the

[1] Clause 1, Section 8, Reg. I of 1793.

* These Members of the Commission sign subject to their remarks which are appended.

landlord is practically powerless to enforce the rights which legally and admittedly belong to him.

§ 3. Again, if the new procedure becomes popular, and its adoption depends solely on the will of the landlord, I fear that simultaneous demands will be made on the Government for agency to carry it out, which will be very embarrassing and perhaps impossible to comply with promptly. I would therefore retain in the hands of Government the power of deciding whether cases for determining the amount of rent payable by each individual shall be dealt with by the revenue authorities or not.

If a landlord desires the preparation of a table of rates of general application, he should of course apply to the Collector under sections 101, *et seq.*, but cases for determining the amount of rent payable by each ryot, whether in accordance with a table of rates so prepared or otherwise, I would have instituted in the first instance before the civil court, section 30 of the Civil Procedure Code being made use of, if necessary.

§ 4. Then, if the suits so instituted were numerous, and if the circumstances showed the existence of the special difficulty which the new procedure before the Collector is devised to meet, the suits should be transferred to the Collector. I would not leave the power of ordering such transfers in the hands of the Judge as is done by section 130 of the Bill, but in those of the Lieutenant-Governor. If on a representation from the Judge the Lieutenant-Governor were satisfied that good reason for the transfer existed, he would order the Collector to make an enhanced jamabandi, such as is contemplated in sections 107, *et seq.*, of the Bill.

§. 5. I would, however, make an exception of the cases contemplated in sections 112, *et seq.*, in which the landlord can shew that, from causes beyond his own control, he is without information as to the existing details of the estate. The hardship of these cases and the difficulties with which a purchaser is beset on acquiring a property from a hostile proprietor, who withholds papers and information, are matters of notoriety. In these cases I would allow the landlord to apply at once to the Collector to make a "settlement jamabandi" as contemplated in section 112.

CALCUTTA, H. L. DAMPIER.
The 5th June 1880.

Remarks by BABOO PEARY MOHUN MOOKERJEE.

§ 1. As several of the provisions of the draft Bill were carried by a majority of votes, and as the above Report very properly gives only such facts and arguments as support those provisions, I wish to record my views on some, at least, of the cardinal points involved in the Bill.

Report, para 45.

§ 2. The Bill has been avowedly framed on the principle that "the land of a country belongs to the people of the country; and while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the majority of the community". This is a theory, however, which assails the very foundation of private property. Whether they are the outcome of prescriptive enjoyment, or the result of acquisition by labour or money, rights of property should be scrupulously respected, and if the Ruler thinks it desirable that a vested right should be destroyed, let it be compensated for at its money-value, or some other equivalent paid to its possessor. It is as reasonable to trench upon a vested right of a landholder for the good of the ryots, as to ask a ryot to carefully cultivate land for the benefit of the entire Indian community.

Preamble and section 3 of Regulation XLIV of 1793. Sections 52 and 60 of Regulation VIII of 1793.

§ 3. The Government of 1793 declared the zemindars to be "proprietors of the soil" and "land-owners". With the exception of ryots who held under pottahs granted before the conclusion of the settlement, and *khudkasht* ryots, no other ryots were declared to have any right of occupancy in the land, or any right to hold land at fixed rates of rent. The landholders, on the contrary, were enjoined not to grant pottahs for a term exceeding ten years.

4, Wyman, page 247.

§ 4. In 1864 a majority of the Judges of the High Court gave it as their opinion that the right of occupancy created by section 6, Act X of 1859, was

an invasion of the rights of the landholder. Mr. Justice Trevor declared it "a great infringement of the law previously existing", and Sir B. Peacock, Baboo Sumbhoo Nath Pundit, and others, suggested its abolition. The former learned Chief Justice based his recommendation on the grounds that "it interferes with the just rights of the zemindars, at least in the permanently settled districts, by vesting rights of occupancy in the ryots which had no previous existence"; and secondly, that "it tends to perpetuate small holdings, which must ultimately become injurious to the best interests of the country". Sir R. Garth is quite as strong in his opinion on the subject—"Now, however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landholder's rights as conferred upon him by the Permanent Settlement."

4, Wyman, page

Note dated 9th January 1880.

§ 5. The right has now been enjoyed by ryots for so long a time that the question of its abolition is at the present moment beyond the pale of discussion, but in the face of the above opinions expressed by responsible interpreters of the law, landholders have a right to ask that there should be no further encroachment on their rights. The Bill, however, provides for the extension of the right of occupancy (1) to those who have held or cultivated land under a mukarraridar or istemrardar; (2) to sub-ryots who have held or cultivated land otherwise than for a term, or year by year, under ryots having rights of occupancy; and, in a qualified form, (3) to ryots who have held land for three years or more, and less than twelve years.

Section 19, Explanation 2.

Explanation 3.

§ 6. Section 19 of the draft Bill, which takes away the right of occupancy from mukarraridars, istemrardars and all ryots whose holdings have been or will be declared, under the operation of the 20 years' presumption, protected from enhancement of rent, and transfers it to their under-ryots, will be productive of great confusion. It will place the mukarraridars at the mercy of their superior holders as regards lands which they cultivate themselves, and restrict their claim to rent from their under-ryots to a percentage of the produce much below what they get at present in several districts. The zemindars will also come in for their share of the loss. Section 20 (*c*) of the Bill recognises the right of the landlord to take possession of the land of any occupancy ryot who dies leaving no heirs, but neither on the death of the mukarraridar, nor of his under-ryot, would he be entitled to take possession of the land. In the first case the holding would escheat to Government, and in the second the land would lapse to the mukarraridar.

Section 23 (c)

§ 7. The new provisions regarding sub-lessees find no justification in any interpretation of the present law. It has been held by the courts that sub-lessees can acquire no right of occupancy, and it was observed by Mr. Justice L. S. Jackson in 22 W. R. 26 that "the law allows a sub-letting by a ryot who has a right of occupancy, though it does not permit the growth of a right of occupancy within a right of occupancy". The creation of a sub-occupancy right would cause a radical change in the position of a large class of ryots and lead to inextricable confusion in the determination of the respective rights of ryots and their sub-lessees. A ryot who has sub-let a portion of the lands which comprise his holding will be a sort of middleman as regards that portion, and an occupancy ryot as regards the remainder. There is nothing to prevent the sub-lessee when he finds that he has substantial rights in the land from sub-letting it in his turn to a second grade of sub-lessees who, although the actual cultivators of the soil and the men whom it is intended to benefit, will have no rights at all.

19, W. R. 95. 15, W. R. 495.

§ 8. It will be equally objectionable to give a recognized status and rights to ryots who have held for more than three and less than twelve years. It will be a new and unwarrantable infringement of the rights of the zemindar. It has been an established principle in this country that ryots, who have not acquired a right of occupancy by holding or cultivating land for the full period of twelve years, must pay whatever rent is demanded of them by the landlord or quit the land. But it is now proposed that whenever a ryot has held or cultivated land for only three years, he shall acquire *quasi*-proprietary rights in the land. He has a right to claim abatement of rent in the same way as an occupancy ryot. If the landlord claims more rent than what the ryot is willing to pay, he cannot get rid of the ryot, unless he previously pays him as compensation for disturbance a sum equal to the increased rent demanded, and compensation also for

Section 31.

Section 27 (b).

houses built and works done on the land, perhaps, without the landlord's knowledge or consent. Considering the price at which existing occupancy holdings are sold when they are sold by public or private sales, the compensation thus calculated will be greater than the full price of such holdings. These ryots will therefore virtually enjoy in many cases a more valuable right than existing occupancy ryots.

§ 9. The legal incidents which have been declared to appertain to a right of occupancy also involve encroachments on the zemindar's rights. Contrary to well-recognized custom and the law as interpreted by the courts, a ryot has been declared entitled to erect a brick-built or other dwelling-house and out-offices, and to dig a tank on his land, without the permission of the zemindar, and also "to cut down and appropriate trees on his holding planted by himself, or by any ryot from whom such holding was derived by public or private sale, gift, device or inheritance". It has been held that "a zemindar has a right to the trees grown on his land by the tenant, who, though he may enjoy the benefit of the growing timber, has no power to cut the trees down". By cutting down the trees on any land, the letting value of the land is materially diminished, and the money that is required for removing the stumps and bringing the land to a culturable state is often considerable. If, therefore, after appropriating the trees the ryot relinquishes the land, the gain is entirely on his side, and the loss entirely on the side of the zemindar. The provisions with regard to the dwelling-houses of ryots are based on incorrect premises. It has been assumed that "owing to the uncertain state of the law many ryots entertain a *bonâ fide* belief that they may build as they please upon their land". The fact, however, is quite the reverse. A ryot who wants to build a dwelling-house invariably goes to the zemindar or his agent and rents a plot of *bastú* land for the purpose. He has to pay no fee unless he wishes to erect a brick-built house. He never meets with any difficulty in building his house, but he is well aware that he cannot, without the permission of the zemindar, build on his arable land and thus change it into *bastú*, which in several places yields less rent than arable land, and not always greater as has been assumed. Ryots always protect themselves by taking perpetual leases from their landlords whenever they wish to build a substantial house or to lay out a garden. The last administration report shows that in 1878-79 so many as 119,015 of such leases were registered in these provinces. The provision in question is, therefore altogether unnecessary, and it will be a source of great loss to the zemindar, especially by reason of the rule which lays down that the rent of *bastú* land shall not be more than five per centum per annum of the market value of such land. Even supposing for a moment, as has been supposed, that an occupancy holding is worth four years' rent, a ryot would have simply to build a house or an out-office on a plot of arable land in order to get the rent of that plot ultimately reduced to one-fifth of what he was paying. The value of an occupancy holding, however, in many places rarely exceeds one year's rent. In such places, therefore, the rent of occupancy holdings converted into *bastú* would be, according to the proposed rule proportionately smaller. These remarks apply with necessary modification to the provision which gives a ryot the power to excavate tanks without the permission of the zemindar.

§ 10. The Bill, it is true, gives the zemindar the power to eject a ryot who builds a factory or other structure not required for his dwelling, but even in such cases the ryot is declared entitled to compensation for the loss sustained by him, if from his ignorance of the changed use of the land the landlord fails to give notice to the ryot within a reasonable time. In dealing with these questions it would be well to bear in mind the remarks made by Mr. Justice Ainslie in 3 I. L. R. 784: "The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to be enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted, and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment."

§ 11. In the matter of enhancement of rent, the provision which has hitherto placed the greatest obstacle in the way of the zemindar has been left untouched. No one questions the justice of the rule which protects from enhancement of rent a holding which has been held at an uniform rate of rent

3, I. L. R., pages 666, 781.

Section 30.

Section 77

Spl. W. R. 367.

Report, para. 111.

Statistical returns, page XL

Section 42

Report, para. 129

Section 39

from the time of the Permanent Settlement. But why exempt the ryot, the party who makes the affirmative allegation, and who is best able to prove it if it is true, from proving that the holding has been so held, and throw the burden of proving that it has not been so held on the zemindar, who has no means of discharging it? The number of landholders in these provinces who date their title from the time of the Permanent Settlement may be counted on our fingers With these rare exceptions, all the landholders have derived their title by public or private sales. Experience has shown that in the immense majority of enhancement suits, perhaps more than 90 per cent., they were unable to rebut the presumption which the law raises in favour of the ryot on his proving uniform payment of rent for 20 years before suit. It cannot be that in all these cases the lands were held from 1793; such a supposition would be incompatible with the well-known fact that more than one-third of the land in these provinces was waste at the time of the Permanent Settlement, and that the rates of rent in every pergunnah varied from time to time. The landholders were, therefore, unable to get their just dues by reason of their inability to rebut a presumption which under any circumstances, and especially when they were auction-purchasers, they found it impossible to rebut. Soon after Act X of 1859 was passed this rule of law was found to work very hard upon the zemindars, but the success with which ryots have in a majority of cases resisted enhancement of rent on some technical plea or other during the last 20 years has placed in their hands evidence which will make the law of presumption operate with double hardship upon the landholder. Nothing, however, shows more clearly the injustice of this rule of presumption than the necessity which the Commission has found of protecting the interests of Government against its operation, by providing that in "estates not permanently settled such presumption shall not operate to prevent the enhancement of rent". If Government with all its prestige and influence, and all the means and appliances, which a well kept and organised system of accounts places at its disposal, has found by experience the necessity of a change in the law to protect its own interests, how much more imperative must be the necessity for an amendment of the law for protecting the interests of private landholders?

Section 1

Sections 6 and 17, Exceptions.

§ 12. As regards the rates of enhancement of rent, the provisions of the existing law have been radically modified on the hypothesis "that the ruling power ought to determine the rents payable in these provinces by the ryots to the zemindars". My reading of the Regulations has, however, led me to the conclusion that the Legislature has always recognised it as an established principle in this country that it is not the ruling power, but custom, which determines the rents payable by ryots to their landlords. The Regulations of 1793 declared the zemindar entitled to get the customary or full pergunnah rate. Speaking of the protection from ejectment which ryots (evidently khudkasht) enjoy in many parts of Bengal, Lord Cornwallis says in his Minute dated the 3rd of February 1790—"Whoever cultivates the land, the zemindar can receive no more than the established rent which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit." Regulation V of 1812, and all the sale laws, recognise the existence of customary or pergunnah rates, and the framers of Act X of 1859 did not take away the rights which the landholders enjoy in this respect. Mr. Mackenzie rightly observes in paragraph 7 of his Note dated the 6th of January last—"I hold that it (a right of occupancy) should only protect the ryot against arbitrary ejectment, and does not entitle him to hold at any privileged rate of rent." Sir Barnes Peacock remarked in his decision in *Ishur Ghose's* case—"To hold that the Legislature intended to confer rights of occupancy which did not previously exist at rents lower than such as could be reasonably obtained from new ryots, would be giving a construction to the Act which would render it an unjust interference with the vested rights of the landholders in the permanently settled districts, would considerably reduce the value of their property, and would defeat the expectations which at the time of the Permanent Settlement were held out to them that they would enjoy exclusively the fruits of their own good management and industry." In one of the leading decisions on the subject, the Privy Council observed that "a suit to

Report para. 46.

2 Wyman 190.

enhance rent proceeds on the presumption that a zemindar holding under the Permanent Settlement has the right from time to time to raise the rents of all the rent-paying lands within the zemindaree, *according to the pergunnah or current rates*, unless he is precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognised by Bengal Regulation VIII of 1793". The Government of 1793 reserved to itself, by section 8, Regulation I of 1793, the power to enact such Regulations as may be necessary "for the protection and welfare of dependent talukdars, ryots and other cultivators of the soil", but the reservation referred, to use the words of the despatch of the Court of Directors, to "such Regulations as might be necessary to prevent the ryots from being improperly disturbed in their possession or loaded with unwarrantable exactions". It would be altogether incompatible with the letter and spirit of the Regulations which were passed simultaneously in the year 1793 to hold that that power extended to the determination of rents payable by ryots to their landlords.

Harington's Analysis, volume II, page 189.

§ 13. Following up the hypothesis which I have combated above, the Commission has suggested a provision to the effect that the enhanced rent of an occupancy ryot should not be more than one-fourth of the average annual value of the gross produce of the land. This dogmatic limitation of the zemindar's share of the produce is not only contradicted by the glaring fact that both in Bengal and Behar, when rent is payable in kind, the zemindar's share of the produce is rarely less than 50 per cent., but it is also indefensible on the grounds of justice and even of expediency. In those tracts of the country where rent is at present considerably more than 25 per cent. of the value of the produce, this rule will stop enhancement of rent altogether. The argument that the landlords in those places already enjoy more profits than what they are fairly entitled to is at best specious. The profits of landlords are not necessarily large in districts in which the ratio of rent to produce is high, nor are they necessarily small where the ratio is low. It appears from the valuations of estates as determined by road cess papers that in Beerbhoom and Hooghly, where the ratio of rent to produce is considerably more than one-fourth, the revenue is more than 45 per cent. of the valuation, while in Dacca and Chittagong, where the ratio of rent to produce is less than one-sixteenth, the revenue is less than 25 per cent. of the valuation of estates. The result of the operation of the proposed rule will be that in some cases, as I have already said, it will stop enhancement altogether; in others it will raise the rent in various proportions; in others, again, it will lead to a decennial doubling of the rents, and in all it will disturb the relative profits which the landlord and the ryot have been hitherto deriving from the land. The rule will not give the courts any help in the decision of suits for enhancement of rent. It is easy to see by the light of the official information placed before the public during the administration of Sir Richard Temple and since, that it will be no great help to the courts to know that the maximum limit of rent is 25 per cent. of the produce, when the prevailing ratio is perhaps 5 per cent. in one place and 40 per cent. in another.

Section 23 (c).

Report, para. 47.

Additional report, 1878-79, page 374.

Mr. Harrison's Tables.

§ 14. Mr. Trevor observed in the great rent case—"As, then, the terms 'fair and equitable' seem to me to have relation to the customary rate of the country, representing a share of the gross produce calculated in money, under whatever form of expression it be designated, and as the law directs that in case of disputes the rate of rent which a ryot with a right of occupancy has paid shall be considered fair and equitable until the contrary be shown, it is a fair presumption that the rent now paid represents the customary rent in the absence of any proof to the contrary. Under this presumption, then, when the value of the produce has increased otherwise than by the agency or the expense of the ryot or the zemindar, and simply in consequence of the rise of prices, what is the principle on which the rent should be adjusted? As the rent now paid represents the customary rent, it represents, on the view which I have adopted, that proportion of the gross produce calculated in money to which the zemindar was entitled; and as the increase in the produce has arisen from circumstances independent both of the zemindar and the ryot, the zemindar is entitled to a rise in his rent proportionate to the increased value of his share of the produce." Taking into consideration all the circumstances affecting the question, the above rule offers the most equitable solution of the difficulty. It gives the landlord and the ryot shares of the produce which local

3, W. R. Act X, page 41.

Report para. 47.

Section 23(b)

custom has declared to be their proper shares, and it distributes the increased value of the produce between them in the ratio in which it was always distributed. The members of the Commission agree with Mr. Trevor in thinking "that existing rents should be taken as the basis of operation", and yet, instead of trying to reduce the rule of proportion in enhancement suits into a workable form, the majority have satisfied themselves with suggesting a maximum limit to enhanced rent. It appears to me that the practical operation of the equitable principles enunciated in the judgment in the great rent case will be rendered easy, and the difficulties which at present beset the investigation and decision of enhancement suits will be wholly removed if, by a careful enquiry, the ratio which rent bears to produce in different districts or other local areas be determined and declared once for all, and all suits and proceedings for the enhancement of rents be decided in future on the basis of such ratios. The justice of the rule has been indirectly admitted in the draft Bill, but it has been recommended in such a form that it will simply perpetuate the difficulties of enquiry, the difference of results in different suits, and the consequent confusion which have always attended the practical working of the rule in the form in which it has been laid down in the great rent case.

§ 15. If the rule of proportion be taken as the fundamental rule for enhance- Section 23(b)
ment of rent, as it has always been taken to be, there will be no necessity for the rule (1) that the enhanced rent shall not be more than double the previous rent, or for the rule (2) that after the rent of a holding has been once Section 10 b)
enhanced, there shall be no enhancement for a period of 10 years next ensuing, or for the rule (3) that if the increase of the productive powers of the land or of the price of produce has taken place otherwise than by the agency or at the Section 23 (c)
expense of the landlord or the ryot, the landlord shall be entitled to only one-half of the benefit of such increase. Rules (1) and (2), although unnecessary, are comparatively unobjectionable; but by rule (3), which is as positive in its terms as rule (1), the benefit of the increase will be equitably divided in districts like Hooghly and Burdwan, but it will distribute the benefit between the landlord and the ryot in Dacca and Chittagong in a ratio which, as against the ryot, will be eight to ten times greater than the ratio in which it has been hitherto divided. The effect of all the various provisions regarding enhancement rent will, therefore, be that instead of a simple rule of proportion to go by, the Munsif or the Collector will have before him for his guidance a number of rules which, without introducing an additional atom of equity or justice in the determination of the question, will complicate matters infinitely more than the existing rule which they are intended to supersede.

§ 16. It has been proposed to convert all holdings of ryots which singly Section 11.
comprise 100 bighas or more into tenures. This proposal, although it entails some loss on the landholders, would have been harmless enough if the maximum margin of profits which a tenure-holder may have for his share had not Section 9
been raised to 30 per cent. of the balance, which remains after deducting from rents payable to him the expenses of collecting such rents. Regulation V of 1812, section 8, fixed the share of the tenure-holder's profits at 10 per cent. of the gross rents collected by him, and although that law was repealed in 1859, and Report, para 51.
by oversight no new provision enacted in its place, the courts have continued to hold such share to be fair and equitable. It is admitted that tenure-holders and other middlemen "are no very useful members of an agricultural Report, para
community". Why then raise their share of the profits? Why do it at a great sacrifice of the interest of the zemindar.

§ 17. The clause regarding progressive enhancement, providing that a Section 23 (d)
decree may direct that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhanced rent is reached, is also open to objection. On this point I wish only to repeat what I said in my Note dated the 20th April 1880: "The idea of progressive enhancement is new and altogether foreign to the subject. When waste land is to be cultivated, one can understand a ryot wishing to rent it at a progressive jumma in consideration of the time which must elapse before the land will yield a full crop; but why should a ryot be entitled to pay even for two or three years anything less than what the court holds to be the fair and equitable rate? It would be taking an altogether wrong view of the rights of the parties if we think that the burden of enhanced rent should be lightly and gradually thrown on the ryot. A con-

sumer of food-grain has much better right to claim a progressive instead of a sudden rise of the price of grain. In the case of the ryot it must be assumed that there has been a steady rise of the value of produce, and that he has refused to pay amicably to the landholder the share of the increased value which he is entitled to get. Tenderness to the ryot, under such circumstances, will be wholly misplaced. It will simply give a premium to litigation, and stop for ever all amicable adjustment of rent."

Section 21. § 18. When rent is payable in kind, the share of the produce which the landlord is entitled to receive has been limited to 50 per cent. In many

Section 86. places, however, both in Bengal and Behar, the landlord's share is nine-sixteenths of the produce, even when the ryot does not receive from him seed, labour, or other assistance. An attempt to reduce existing rates will be not only fraught with injustice, but it will be also productive of much confusion by the disturbance of existing rights. I also object to the ryot in Behar being invested with the power of having rent payable in kind commuted to an annual money-rent. Where rent is paid in kind there is no necessity for enhancement; both the parties get their customary share of the benefit whenever there is an increase in the value of produce. The proposed change will make litigation inevitable where the rights of the parties at present adjust themselves without any extraneous intervention.

Report, para § 19. The provisions for the distraint of crops are very widely resorted to by landholders for the recovery of their rents. They enable them to realize their rents at the proper time, simply by the threat of coercive measures without putting the legal machinery into action, while they save the ryot the loss of time, work and money attendant on suits for arrears of rent. The landlords have seldom the motive to abuse the power vested in them, and, as a matter of fact, the power *is* seldom abused. The heavy penalties provided for cases of abuse of the power are effectual deterrents against wanton or oppressive distraint. Whenever the power is improperly exercised, the law gives the ryot ample compensation for any losses sustained by him. The process of distraint is a mode of proceeding which has taken root in the minds of landlords, and it is regarded by them as the most effectual mens for the easy and timely realization of their rents from a body of men who are known to be generally improvident, and who would be ultimately injured rather than benefited by the abolition of the process. The reasons given for its abolition are based on incorrect and insufficient information, and they do not justify a change in the law, which will be a misfortune alike to zemindar and ryot.

§ 20. The necessity for investing the district courts with the power of

Section 65 appointing a manager for the management of an estate or tenure held by two or more coparceners, when even a single ryot, or the owner of an infinitesimal share, chooses to apply for such an appointment, has not been made out. The decision recently passed by a Full Bench of the High Court, recognizing the power of every coparcener to have his share of the rent apportioned by a suit in court, will remove all sources of annoyance to the ryots of joint estates and tenures, and of disputes among the coparceners themselves. The proposal for the appointment of managers by court is therefore uncalled for. A similar proposition started at the time of Sir George Campbell was looked upon with disfavour by the executive and judicial officers who were consulted about it, and it was abandoned after a thorough discussion of its merits and demerits. It is certainly not desirable that the mediæval passion for superseding the independent conduct of every man's affairs by officious legislation in matters relating to land should not be revived.

Section 56. § 21. There are some minor points on which also I am obliged to differ from the majority of my colleagues. (1) The present law allows interest at the rate of 12 per cent. on arrears of rent. The draft Bill takes away the land-

Section 22. lord's right to collect rent by monthly kists, and yet it makes the rate of interest in some measure discretionary with the courts. (2) It has been no doubt held by the courts that a slight increase of area of a holding where the boundaries have not changed is no ground for enhancement of rent. The

Section 25. draft Bill, however, gives illustrations of the principle which, if followed, would in a large number of cases not legitimately coming within it deprive the landlord of his right of enhancement on the ground of excess lands. It is also evident that where the rent is fixed at so much per bigha, the above principle

does not apply, and there is no reason why there should be no enhancement even for a slight increase of area. On the other hand, a ryot can apply for abatement of rent on the allegation that his holding of ten bighas is found by measurement to be one cottah less than that quantity. (3) The change which the Bill seeks to introduce in the law relating to the sale of tenures for their own default is unnecessary, and I have no doubt that it will be a fruitful source of litigation. Section 206

§ 22. The discussions that were invited on the proposal for making rights of occupancy transferable showed that, while it involved a great injustice to the landholders, it was a matter of questionable expediency. The observations made on the subject by the learned Chief Justice in his Note dated the 8th of January last are so well founded on facts, and so well argued, that I shall content myself with giving extracts from it. After assuming that the creation of the right of occupancy could be defended on grounds of equity, he pertinently asks—"If the equity to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the tenant to transfer his interest? It is hardly fair to suggest that zemindars ought not to object to the transferability of ryots' tenures, on the ground that the measure would be merely unpleasant or injurious to themselves. It strikes me that this is just the ground upon which zemindars, or any other class of men, are perfectly justified in objecting to any public measure. I can hardly conceive a greater source of irritation than for a rival zemindar to buy up a number of ryots' holdings in the middle of his neighbour's estate, and to use his influence and position, so obtained, to create disaffection and disloyalty amongst his neighbour's ryots. It seems to me impossible to contend, with any show of reason, that it is no injustice to a landlord to deprive him of the right which he has by law of selecting his own tenants, and I confess that I cannot view such injustice in the light of a sentimental grievance. I think it equally true, on the other hand, that to give a poor population like the Bengal ryots the means of selling or mortgaging their tenures at pleasure is a very certain means of making them improvident and unthrifty. I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property by prohibiting the alienation of it in any shape or way." If rights of occupancy be made transferable, the provision for the ejectment of occupancy ryots for arrears of rent must be, as it has been in the draft Bill, done away with. Should therefore Government determine to give a saleable character to occupancy holdings, the zemindars have a right to expect that they should be adequately compensated for these new infringements of their rights, and that at least effective facilities will be given them for recovery and enhancement of rent. Section 79 Explanation.

§ 23. What are the facilities and benefits which the draft Bill proposes to give the landholders in exchange for the new encroachments upon their rights? The provisions touching the registration of transfers of tenures, under-tenures and holdings by succession, gift, sale and otherwise, are perhaps the only sections in the Bill which they can look upon as an improvement on the present law, so far as regards a proper recognition of their rights in one particular. These provisions are, however, a necessary corollary to the new sections regarding the transferability of ryoti holdings. The new provisions for the settlement of rent by the Collector are of questionable benefit to the zemindar. They take away the constitutional rights of parties as to representation by Counsel and as to appeals, and place the determination of most valuable rights in the hands of the executive. Sections 46, 54

§ 24. Upon the whole, I think that the draft Bill in its present form will not be nearly half so acceptible to the general body of landholders as the written and unwritten laws which now govern their relations with their ryots. For one good measure or two which we propose to offer them, we propose to curtail and annihilate their rights in fifty different directions.

PEARY MOHUN MOOKERJEE.

The 14th June 1880.

Remarks by BABOO MOHINI MOHUN ROY.

§ 1. I DO not approve of the draft Bill as a whole, and strongly disapprove of the many material changes which it proposes to make in the substantive law relating to rights in land. I always deprecated such changes. The relation of landlord and tenant, with reference to rights in land, is such that you cannot confer a valuable right upon one class without causing a corresponding diminution in the interest of the other. I was therefore of opinion that we ought not to make any substantial alterations in the respective rights of landlords and tenants as defined by Act X of 1859 and Act VIII (B.C.) of 1869; but that we might do a great deal for their common benefit and diminish litigation by simplifying the procedure, by simplifying the relations of the two classes, and by removing the technical difficulties and formal obstacles which now exist in the way of the exercise of their just and undoubted rights. The majority of the official members, who likewise formed the majority of the Rent Commission, however held views somewhat different, and seemed to think that the line drawn by the existing law [Act X of 1859 and Act VIII (B.C.) of 1869] between the conflicting rights of landlord and tenant was not sufficiently "scientific"; and that they (the majority of the Rent Commission) might, and should now, recast land-tenures and make a re-distribution of the property in land between the two classes.

§ 2. There was considerable discussion and difference of opinion upon one point, *viz.*, whether Act X of 1859 had altered the previously existing law to the advantage or disadvantage of the ryot. Upon this point I entertain a very clear and decided opinion, which is likewise supported by high authority. In the Minute of Sir Barnes Peacock, dated the 31st March 1864, he says—"It appears to me that section 6 is objectionable and ought to be repealed, *first*, because if interferes with the just rights of the zemindars, at least in the permanently settled districts, by vesting rights of occupancy in the ryots, which had no previous existence." Lord Canning, in his message conveying his assent to the Bill (Act X of 1859), said—"It had long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with by the Bill should be settled; that the Bill was a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which they had not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars such as ought long since to have been provided."

§ 3. Such high authorities seem to be fairly conclusive upon the point. But it also seems to me that we ought not to go behind Act X of 1859. That Act has been law now nearly 20 years, the people of Bengal have become familiar with its provisions, and made their arrangements and contracts upon the footing thereof. The disquiet and the disaffection consequent on the introduction of a new law have now subsided. It often takes a considerable time for a law to settle itself, and for the people to adapt themselves and to adjust their relations according to the law. The existing law relating to landlord and tenant may fairly be said to have arrived at this stage. We should now be very careful not to do anything which may have the effect of embroiling again the two classes and bringing on another cycle of disquiet and disturbance. The draft Bill, if passed into law without extensive alterations, is, I am afraid, extremely likely to produce this result.

§ 4. One objectionable feature of the draft Bill which requires especial notice is that, striving at elaboration, its tendency has been to complicate the relations between landlord and tenant. Very little has been done in the way of simplification. I do not say that nothing has been done in this direction, but a great deal more might be done. As the draft Bill stands at present, the simplifications effected will bear no comparison to the complications introduced. In this respect our draft Bill has very poor claims to be considered an improvement upon Act X of 1859. One section of the old law has been swelled into ten, and illustrations and explanations added in the somewhat typical form of our modern efforts at legislation. We know by experience that illustrations and explanations too often fail in their object, and instead of elucidating raise new and unforeseen difficulties and doubts as to the meaning of the text. If our Bill be so fortunate as to be introduced into

Council, I hope care will be taken to reduce it to shape, and to make it simple and practicable by cutting out half the sections and sub-sections and all the illustrations and explanations. Some of the most questionable "improvements" are in these sub-sections, illustrations and explanations (*vide* explanation I of section 18, and clause (*b*) of section 77).

§ 5. It is not my intention to criticise all the changes which our draft Bill proposes to make in the present law, but I shall briefly refer to some of the most objectionable ones, such as I consider to have a highly mischievous tendency, or to be clear infringements of existing rights.

(*a*) *Chapter III, Section 18.*—Provisions for sub-letting by an occupancy ryot and for converting an occupancy ryot into a tenure-holder. These provisions are clear infringements of the rights of landlords, and to some extent also of the rights of occupancy ryots as against their sub-ryots, and are calculated to give rise to much litigation.

(*b*) *Chapter IV, Sections 26 to 31.*—Investing three-year ryots with occupancy rights in a modified form. This is a flagrant change and requires no comment.

(*c*) *Chapter VI, Sections 37, 38, 39 and 40.*—I do not object to section 36 which enables a ryot to build a dwelling-house upon the land of his holding. But sections 37, 38, 39 and 40 have a dangerous tendency, and will be productive of bitter and harassing litigation. I suppose if a ryot applies land to any purpose inconsistent with that for which it was let to him, he is a wrong-doer. There is no reason in justice why so much tenderness should be shown to him, and so many artificial difficulties thrown in the way of the landlord seeking to remedy the wrong. Section 40 appears to have been framed with reference to some old rulings of our Court and is vicious in principle. It has been held in later cases that mere delay in suing does not constitute acquiescence and deprive a plaintiff of his right to relief—(*vide* Indian Law Reports I, Allahabad, page 32, and X, Bengal Law Reports page 324).

(*d*) *Chapter VI, Sections 41 and 42.*—This is a very dangerous "improvement" and one of a very wide range and comprehensive character. I do not object to extending the principle of occupancy right to homestead lands in villages used for dwelling purposes by artizans, shop-keepers, and other non-agricultural people. But I object to the maximum rent being fixed at five per cent. of the market value, which I consider to be too low. Nine per cent. would, in my opinion, be fair. As to extending the principle of occupancy right to village lands not used for dwelling purposes and to lands situated in towns (whether used for building or any other purpose), it seems to be entirely out of the question, unless wholesale confiscation of private property is intended.

(*e*) *Chapter X, Sections 65 to 67.*—The provisions for the appointment of a manager are unnecessary and will answer no useful purpose. Persons out of possession having claims to a share in property will largely resort to these provisions for the purpose of obtaining a recognition in some shape of their claims or of harassing their adversaries. In this respect I think the existing law is quite sufficient for all practical purposes and does not require any alteration.

(*f*) *Chapter XI, Section 77, Clause* (*b*).—Ryots entitled to cut trees. In the case of *Ruttonjee Eduljee Shet* (X, W. R., page 13, P. C.) the Judicial Committee of the Privy Council say—"The trees upon the land were part of the land, and the right to cut down and sell those trees were incident to the proprietorship of the land. The appellant (who was lessee under Government) must ground his title to those trees and the right to cut them down either upon this that it is a necessary incident of the lease, or, secondly, under some positive law, or, thirdly, under some custom to be incorporated in the lease, or, fourthly, under the express terms of the lease."

(*g*) *Chapter XVIII, Sections 206 and 207.*—I as a member of the profession ought to be grateful for this "improvement", which certainly promises a splendid crop of litigation. But it will place a serious obstacle in the way of obtaining execution of rent-decrees in cases of saleable tenures. It was remarked by Sir Barnes Peacock in one of his judgments that "in this country a plaintiff's troubles begin as soon as he obtains a decree". Indeed, our laws have provided

many ingenious devices for obstructing and delaying execution. But delay in the execution of a rent-decree is far more injurious and involves greater risk of loss than in the case of other decrees. The accumulation in other decrees is simply of interest, but in the case of a rent-decree it is of interest and subsequent rents.

It is also worthy of consideration that the subordinate tenants have obtained their tenures with full knowledge of their risk and presumably paid value upon this footing. They cannot justly ask that the law should be changed for their benefit and to the prejudice of the superior landlord, or, in other words, that they should be secured against all risk, while additional obstructions and risk of loss should be thrown upon the superior landlord. The subordinate tenants have the right to salve the parent tenure and thereby protect their own interests by paying in the amount of the decree. I also think that in some cases, where incumbrances and intermediate tenures have multiplied to an abnormal extent, their extinction is urgently required, and that in such cases a sale of the superior tenure for arrears of rent proves the salvation of the property. It is stated in the Report (paragraph 15) "that in Backergunge there are as many as thirteen persons having successive interests in the land inferior to that of the proprietor or zemindar". Above all, the complications and consequent litigation which this change will produce will far outweigh any little good which it may do to certain intermediate tenants.

§ 6. In conclusion, I wish to say a few words with reference to one important point noticed in paragraph 7 of the Report. It seems to me that the suggestion that "all contracts of tenancy should be required by law to be in writing" has been discarded by the majority of the Commission without any good reason. The facts cited and arguments used in the Report go only to show that no retrospective effect should be given to such a law. I have searched in vain for a single fact or argument against its adoption in respect of new tenancies.

It is admitted that "this suggestion has been repeatedly made and, on more than one occasion, supported by high authority. The advisability of having such contracts in writing impressed itself at an early period upon the minds of the people of England. The first section of the Statute of Frauds enacted that all leases made by parol, and not put in writing, should have the force and effect of leases-at-will only. The experience of the registration offices indicates that writing is commonly used in the creation of new tenancies."

But it is said that "the majority of the tenancies in Bengal and Behar depend upon custom rather than contract". This is a doubtful proposition of fact and somewhat vaguely put. But the inference drawn therefrom against the adoption of written contracts in respect of new tenancies is clearly erroneous. The law with reference to customs is, as laid down by the Privy Council in the case of Nil Kristo Deb Barmana (12 W. R., page 21, P. C.) "where a custom is proved to exist, it supersedes the general law which, however, still regulates all beyond the custom". Especial provision has been made in our draft Bill for saving customs and customary rights (*vide* paragraph 12 of the Report). It is stated therein—"We believe that there are many local customs in this as well as in every other country well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice; and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions."

The area of the operation of local customs must be extremely small, and it is difficult to see how such customs can apply to new tenancies. But the enactment of a law compelling written contracts in cases of new tenancies created will not and cannot interfere with local customs where such are proved to exist.

The advantages of enacting a law similar to the first section of the Statute of Frauds are manifest. It will simplify the relations of landlord and tenant, render such relations more certain and less open to doubt and controversy, and greatly diminish litigation. It will scarcely be making any change in the present law. It has been held in numerous cases in our Courts that, where an ejected tenant sued to recover possession against his landlord, "it was for him to prove that he was entitled to obtain possession either by virtue of a lease

granted to him by the zemindar, or by a virtue of a right of occupancy acquired under section 6, Act X." The above quotation is from the judgment of Justice Dwarka Nath Mitter in the case of Ram Mohun Das (14 W. R., page 41).

§ 7. Let the right of occupancy remain; let all existing tenancies and local customs be saved; but let not new kinds of tenancy be created by statute; and let it be declared that henceforth all contracts of tenancy "not put in writing shall have the force and effect of leases-at-will only". This is simple and seems to be what will meet the present requirements of the country.

MOHINI MOHUN ROY.

The 16th June 1880.

Remarks by MR. MACKENZIE.

§ 1. I HAVE signed the Report and accepted the Bill as a whole, though there are some few points in both of which I do not altogether approve.

§ 2. Much credit is due to Mr. Field for the manner in which, under considerable difficulties, owing to the absence latterly from Calcutta of several members of the Commission, he has succeeded in fairly embodying in the Report the views of most of us, and in expressing in his draft sections the general conclusions arrived at while we were together. The only member who has thought fit to cavil at the *style* of the work is apparently Baboo Mohini Mohun Roy, who, to our great loss, only found leisure to attend less than half of the forty-four meetings of the Commission, was seldom able, when he did come, to remain till the close of any meeting, was absent when many of the more important matters were discussed, and gave less aid in shaping the measure which he now criticises than any other member. Personally I regret this, because what few suggestions this gentleman favoured us with were practical and marked by much acuteness, and, if he had been actively suggestive instead of unduly reticent, we might have derived much benefit from his assistance.

§ 3. There can be no doubt that in its *main* features the Bill expresses the common conclusions of all the members, with the marked exception of the two gentlemen who represented specially the zemindary interest—Baboo Peary Mohun Mookerjea and Baboo Mohini Mohun Roy. I am afraid that the only measure likely to command their unqualified approval would be a Bill giving unlimited facilities of collection and enhancement of rent to the zemindars, and curtailing, as far as possible, the few legally recognised privileges of under-tenants and ryots. Baboo Peary Mohun Mookerjea especially has been consistently opposed to making any concessions to either tenure-holders or cultivators, and has even repudiated the more liberal views of the British Indian Association, as officially expressed, on such matters as the maximum rate of occupancy rents, and the transferability of the occupancy tenure. Both these gentlemen in their minutes of dissent protest vigorously against "going behind Act X of 1859" when any benefit to tenants is likely to arise therefrom, but they both seem quite ready to set Act X aside when any consequent gain would accrue to the class which they represent. I place in contrast, as some evidence of this, the following passages:—

Extract from remarks on the Bill by Baboo Mohini Mohun Roy.

"I do not approve of the draft Bill as a whole, and strongly disapprove of the many material changes which it proposes to make in the substantive law relating to rights in land. I always deprecated such changes..... I was therefore of opinion that we ought not to make any substantial alterations in the respective rights of landlords and tenants as defined by Act X of 1859 and Act VIII (B. C.) of 1869.....It seems to me we ought not to go behind Act X."

Extract from proceedings of the Eighteenth Meeting of the Commission.

"Baboo Mohini Mohun Roy *proposed* to alter the presumption that when a ryot's rent has not been changed for 20 years, the land has been held at that rent from the time of the Permanent Settlement.

Ayes.	*Nos.*
Baboo Mohini Mohun Roy.	*All the other six members of the Commission.*
Baboo Peary Mohun Mookerjea.	

§ 4. Now, though I think it right to notice the spirit in which these dissentient members approached the subject, I do not for a moment maintain that this fact invalidates their criticisms or disparages their arguments. They sup-

port, as they have every right to do, one side of very vexed question. It is natural enough that they should as landholders themselves enunciate the highest theories of the character and extent of zemindarry rights in Bengal. They make of course, and quite legitimately, the very most of the terms "proprietors of the soil" and "landowners" used in the legislation of 1793. They hold on tenaciously, and rightly, to the sheet-anchor of their school—Sir Barnes Peacock;—and they are, fortunately for them, able also to refer to the present Chief Justice as having (though so far on the unargued case) accepted the views of the zemindary propaganda. There is evidently much to be said, therefore, for their view of the facts, and it is not at all likely to be left unsaid. The landed and wealthy classes of Bengal have powerful organs in the Press, and powerful friends both here and at home. There are many of them very amiable persons, of great intelligence and great benevolence. Officials are glad to do them favours, and find it pleasant to be on friendly relations with them. Every prejudice arising out of Western notions of property and the relations of landlord and tenant in Great Britain is entirely on their side. It is only at the cost of much dry study of old records, old laws, and old books, and from a close and critical examination of certain apparently anomalous survivals in the rural economy of the province, that one comes to learn that there is, even in permanently-settled Bengal, quite another side to the land question which is not represented in the zemindar's statement of the case, which has been affected less than is supposed by modern legislation, which concerns the interests of vast masses of unfriended peasants, and which the occurrences of recent years make it necessary, once for all, to bring prominently under the consideration of Government and the Legislature.

§ 5. I cannot here enter into a detailed statement of the grounds upon which I, for one, have been led to hold that there is, both in law and fact, a living tenant-right in Bengal—a right, that is to say, belonging to the cultivator, limiting and restricting the proprietary rights of the zemindar, and which, though seriously damaged by ill-advised legislation, has not yet been altogether destroyed. Some of these grounds will be found on record in the proceedings of the Commission, and especially in Mr. O'Kinealy's historical note. The Commission has by a majority practically endorsed that general view, though it has not seen its way to placing the matter on the simple basis suggested by me. I wish here, therefore, very briefly to repeat what my contention is, and to show that it is not after all more than the zemindars themselves would be wise to grant.

§ 6. I may remark at the outset that I have myself no special reverence for Act X of 1859. I have read all the correspondence leading up to it, and all the discussions attending its enactment, and I suppose that there never was a measure of equal moment so inadequately considered and debated. The fact is that it was devised mainly to meet acknowledged evils arising out of the summary procedure then in force for the recovery of rents, and attaching to the system of distraint; and what provisions of substantive law were incorporated in it were brought in almost haphazard, without any reference to the mass of information bearing upon them, which lay in the record-rooms of Government, and the numerous discussions and proposals of former years, which had been allowed to slide into oblivion. I have the original file before me as I write, and it is marvellous to see how little was known of bygone discussions as to ryots' rights, bygone orders of the Court of Directors to protect these, and bygone representations of Collectors as to the "unauthorized encroachments" of the zemindars. I attach to this almost the only paper I can find among the reports on the Bill that shows any real acquaintance with the constitutional history of rural Bengal—a minute by Mr. A. Sconce, though even Mr. Sconce was not fully aware of the actual strength of the resident ryot's position. I also attach a minute by the Lieutenant-Governor, Mr. F. M. Halliday, recorded by way of of instruction to Mr. Currie, the Member in charge of the Bill. It is curious to note how very near the occupancy ryots came to getting permanency of rent-rates in 1859, and how little apparently it was intended to stimulate a general enhancement of such ryots' rents. It is equally curious to learn from the papers that the Select Committee on Act X were mainly influenced in adopting the twelve years' rule of occupancy by an erroneous construction of a revenue circular of the North-West Board, which had no application what-

ever to Bengal. It was due, indeed, mainly to this misconception that the Act, as passed, failed to declare what the Bill, as introduced, laid down as acknowledged law—that *every* resident ryot had a right of occupancy, and that *three year'* cultivation of land conferred rights of occupancy on resident ryots even in lands not previously in their occupation, and for which they had no written lease.

§ 7. Such being the inner history of the making of Act X, it is to my mind absurd to refer to it as a sort of legal revelation, which it is heresy to supplement and sacrilege to alter. If it can be shown that the Act has failed to settle satisfactorily the questions with which it deals, let it, I say, be amended like any other piece of imperfect legislation. That it is imperfect is proved by the vast number of conflicting decisions massed around it by the courts. It is quite a misrepresentation to say that it has anywhere 'settled' the respective rights of landlords and tenants. It has not certainly satisfied the zemindars. They have been calling loudly for its amendment in their own interests, and it is only when they are afraid of losing possessions which, under its provisions, they have managed to occupy legally for the first time, that they appeal to it as a final settlement of their relations with their tenants.* They have told us repeatedly that they can neither collect their rents nor enhance their rents under the Act as it stands; and they are willing enough to see the Act set aside so long as the Government confines its attention to these particular points. By all means then let us amend the law on these points; but as we are thus disturbing necessarily the existing relations of landlord and tenant in the interests of the landlords, we ought surely at the same time to see if nothing else is needed to maintain or restore the equitable balance between the parties. The Commission was, I contend, bound to enquire if the legislation of 1859 has not in some way injured the ryots as well as restricted landlords' rights.

§ 8. For my part I have no doubt whatever that it was from the earliest times an axiom in Indian land law that every settled cultivator was entitled to be maintained in the quiet occupation of the land he tilled, so long as he paid the established quota of land-tax to the State, or (in Bengal) to the zemindar as under contract representing the State; and that this was a right inherent in the cultivator, and did not in any way emanate from the zemindar as sudder malguzar. Ejectment for any other cause than non-payment of the established quota of land tax I consider repugnant both to the sentiment of the people and to the whole spirit and tenor of their laws and customs. I maintain that in Bengal *every* resident ryot had a right of occupancy in his jote; and that *every* cultivator who settled down permanently to cultivate as a member of the village community became *ipso facto* a resident ryot. I hold that recognition as a resident ryot rendered such a settler liable to pay his share of the revenue assessed on his village according to established local rates, and not at any higher rates. I believe that it was not the intention of the Legislature in 1793 to alter this, or to confer on the zemindars a power of enhancing either individual ryot's rates or general local rates at pleasure, and I consider it *almost* certain that ordinary landlords had originally under our legislation no legal power of raising the customary prevailing rates at all. *Per contrá*, I admit that, as a fact, ordinary landlords, profiting by special rules made in favour of auction-purchasers and devised to protect the Government revenue, have persistently and with the sanction of the Courts (though until lately not with that of the Legislature) enhanced rents arbitrarily, and that this right cannot now equitably be denied them. But, on the other hand, I hold that the ryot's position cannot equitably be altogether destroyed. He is entitled in virtue of his ancient rights, and of the reiterated orders of the Home Government to secure him those rights, to be protected against arbitrary ejectment; he is entitled to demand that his rent-rates shall be those prevailing in, or legally established for, his neighbourhood; and he is entitled so far to benefit by the intentions of the Government in 1793 as to derive from his holding not merely maintenance, but a reasonable profit. If Act X fails in any degree to secure these rights, then I say the ryot on his side can fairly claim to have it amended to that end.

§ 9. Now all that a reasonable zemindar wants is to get his rents in easily, and to be able to share in the profits accruing from the rising prices of country produce. It is entirely to his advantage to have a settled tenantry, comfortable in circumstances, and able to stand the pressure of occasional bad seasons. If

he has proper facilities for realizing his rents, he can have no proper motive for claiming a right of ejecting the ryots at his pleasure. He will willingly recognize the right of every well-to-do ryot to occupy. How, then, are we to secure well-to-do ryots? The only way is by restricting the legal demand of what has now become 'rent'. If it be once admitted that the ryot has a beneficial interest in his tenure, the corner-stone of agricultural prosperity may be considered laid. At present the zemindars complain that they cannot enhance in spite of all the advantages given them by Act X, which is the first law recognizing definitely their right to enhance with reference to the value of produce. I would not myself remove any one of the practical difficulties now in their way, unless they consent, once for all, to recognize the ryots' beneficial interest. If they want to see their own present position improved, they must, I submit, consent to all reasonable measures which will secure the general improvement of the country. I would take from them no income which they now enjoy, but I would not give them the ready means of making more, unless they are prepared to assist in recognizing and restoring the rights of the cultivators. Both zemindar and cultivator are proprietors in a sense, and each must respect the estate of the other.

§ 10. To my mind the only true insurance against famine is the maintenance, and, if need be, the creation of a substantial peasantry, such as the theory (though unfortunately not the practice) of Indian land law has always favoured. To secure this, then, I would have the State take into its own hands the settlement of rent-rates. I would not, I again repeat, take away from the zemindars any profits which they now enjoy, save in the few cases where these are obviously inordinate, as they certainly are where the landlord, while leaving all risks to the cultivators, seizes more than half the gross produce. But I would make it the business of the revenue authorities to regulate, as of old, the distribution of profits for the future; and I would protect the settled cultivators against everything like arbitrary interference from above.

§ 11. In this view I suggested to the Commission the recognition of the right to occupy at the rates established by the revenue authorities, as the privilege of *every* ryot who had for three consecutive years cultivated land in a village. I took three years as a fair test of intention to become what, under the changed circumstances of the country and the arbitrary boundaries of survey villages, might reasonably be treated as the equivalent of the old resident ryot. Mr. O'Kinealy, Baboo Brojendro Kumar Seal, and, in the main Mr. Harrison agreed with me. Unfortunately their views of the necessity of "upholding Act X" prevented Mr. Dampier and Mr. Field from also concurring, though I believe, apart from that, Mr. Dampier was inclined to favour the proposal. If this suggestion had been accepted, the complicated proposals for compensation for ejected ryots of three years' standing put forward by Mr. Harrison and embodied in Chapter IV of the Bill would be unnecessary.

§ 12. Holding these views, I am of course not satisfied with the provisions of clause (*e*) of section 20 of the Bill, which authorizes the landlord and ryot to *contract* for the ejectment of the latter for breach of *any* stipulation made between them, nor with clause (*h*) of explanation 4 of section 19, which empowers the landlord to exact from an in-coming tenant a contract that rights of occupancy shall not accrue. I maintain that it is for the public good that rights of occupancy, as above explained, should be the universal rule and not the exception; and I would not allow a rule based on public policy to be upset by private contract, in making which one of the parties (the ryot) would always be at an unfair disadvantage, and compelled to subscribe to conditions which, if a free agent, he would undoubtedly repudiate. I find also that Courts of Equity at home now-a-days decline to enforce stipulations of ejectment in cases where an award of damages would equitably meet the case.

§ 13. Another point in the Bill to which I take exception is the concluding clause of section 45. If the State through its revenue officers is now to assess the rents payable to zemindars without interference from the civil courts, which are *ex hypothesi* tribunals unfit to deal with such economic cases, then it certainly should be at liberty to assess its own revenue, as from the earliest times and until the courts put an unforeseen construction on Act X, it always used to do. The State is more interested in imposing light assessments than any zemindar. It has, I admit, not always seen this in the past. But a great

change is passing over the official mind in this respect; and at any rate the proper corrective authority in such cases is not the civil court, but the Secretary of State. Let us have, if necessary, a strict and well considered settlement law for the guidance of revenue officers, and then we may put the civil courts entirely on one side, instead of merely working round them as we are driven to do in Act VIII (B. C.) of 1879.

§ 14. I am disposed generally to concur in Mr. Dampier's remarks on Chapter XV. If the revenue authorities lay down recognised rates for the different classes of soil in a neighbourhood from time to time, and the landlord and the courts are made to accept these in cases of dispute, nearly all that is required will be done. The old pergunnah rates will practically have become re-established. Those rates will soon become general and accepted.

§ 15. The question of sub-letting is one of great difficulty, and I am by no means certain that the solution offered in the Bill, taken with the arbitrary distinction (based upon area), drawn between tenures and holdings, is likely to find acceptance or work smoothly. But it is a plan worth considering. I have already, in notes recorded on the proceedings, said all that I need say on the subject. I will only remark here that I still think the imposition of a *legal maximum* of rent for non-occupancy ryots would in the end have worked into the rural economy of the country, and served as a quiet, but effectual, check upon excessive sub-letting. I know well all the objections that can be urged against this notion of a legal maximum fixed with reference to gross produce; but there is the fact that from the days of Menu the people of India are familiar with the idea, and reconciled to any inequalities involved in its application. There must always be inequalities of taxation, and we must remember that we are really dealing with what was originally not rent, but a land tax.

§ 16. I need scarcely say that in common with the majority of the members of the Commission, I protest against Baboo Peary Mohun Mookerjea's theory of enhancement, which practically amounts to this, that when in any district an oppressive and litigious zemindar, by suing his ryots for monthly kists, and by other means of harassment, has succeeded in destroying their rights, and coercing them into paying exorbitant rents, now *those rents* should be taken as a fresh starting point for future enhancement, even though far in excess of any reasonable maximum. Let every such zemindar keep by all means his present profits as the law has given them, and salve his conscience as best he may; but let him not expect assistance from either Government or the Legislature in completing the ruin of his unhappy tenantry.

§ 17. I equally, of course, repudiate his idea that if occupancy tenures are made transferable, zemindars should be "compensated for this new infringement of their rights. If such preposterous claims lead to a more general and searching enquiry as to what zemindary rights in Bengal really are, they may perhaps effect some good, though not perhaps altogether in the way contemplated by Baboo Peary Mohun Mookerjea.

§18. The other points in his remarks, and in that of Baboo Mohini Mohun Roy, seem to be sufficiently met by the report of the Commission.

DARJEELING; A. MACKENZIE.
The 23rd May 1880.

APPENDIX A.

Minute by Mr. A. Sconce on the Bill to "amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal",—dated the 19th May 1858.

I TAKE it that the subject proposed for discussion and enactment in the 3rd and immediately succeeding sections of this Bill is the most important that ever was, or I may say that can be, submitted for the consideration of the Legislature. These sections present to us the first substantial attempt to redeem the pledge undertaken by the Government in clause 1, section 8, Regulation XVII, 1793, to "protect those classes of the people who from their situation are most helpless and to enact laws necessary for the protection and welfare of ryots and other cultivators of the soil".

The legislation proposed in this matter naturally divides itself into two general heads: first, the legal character or title of the occupancy of the ryot; and second, the rent at which he is liable to be assessed.

In the 3rd and 4th sections of the Bill the nature of a ryot's occupancy is described by different disignations. We have mentioned hereditary ryots, resident ryots, and all other ryots. I am not unconscious that the character of the occupancy of a ryot is in one sense very

materially determined by the rent or rate of rent which he is bound to pay; but we are all familiar with the broad distinction of permanent and temporary rights of occupancy; and it seems to me most essential to consider clearly what our language means, and to define with legal exactitude the peculiar forms of the tenures for which we legislate.

In section 4 it is said every resident ryot has a right of occupancy in the land held or cultivated by him. In section 3 the words hereditary ryots are used. Is there any distinction between the word resident and the word hereditary; and if there be a distinction, to what does it amount? The right assumed to be vested in a resident ryot is of the highest value, for, paying he rent due from him, his occupancy cannot be disturbed. I suppose that the word resident imports permanent residence, or, in other words, hereditary occupancy, and is the English equivalent of Khood Kusht or Kudeemee ryot as indicated in section 32, Regulation XI of 1822. The right, however named, seems to be mainly founded on prescription: and perhaps the terms 'prescriptive occupancy' best define the existent right, and afford the best guide for testing a disputed tenure by the standard which the law recognizes. The first suggestion therefore which I have to make is that the terms used in sections 3 and 4 should correspond, and that, instead of the words "hereditary" or "resident", should be substituted "having a prescriptive right of occupancy".

I do not say, however, that in using an uniform definition the difficulties which daily arise for adjustment and adjudication are effectually solved. It may not be doubtful that a Khood Kusht ryot has a right of prescriptive occupancy, but prescription grows and is constituted by the effluxion of time, and thus an occupancy which being immature and new does not amount to a permanent right, by long recognition became eventually prescriptive. Rights like customs may be imperceptible in their origin and progress, which nevertheless in time we do not hesitate to characterize and to perpetuate. The last sentence in section 5 of this Bill appears intended to create a right of prescriptive occupancy in favour of a resident ryot with respect to land recently acquired by him. Possession and payment of rent for *three years*, supposing the tenant's right not to be otherwise limited by a written engagement, here create a right of occupancy. This provision, it will be seen, is confined to land newly acquired by resident ryots. Land not before held on a prescriptive tenure becomes after three years included within the older land of the ryot, and subject, I suppose, to the same conditions of occupancy: and so, it seems to me, as mere occupation for a limited period restricts the proprietor's right of ouster, a similar provision should be made in favour of other ryots by reason of prolonged occupancy.

I believe that the experience of all of us shows that it is in vain to look for precisely marked distinctions between the old and recent occupancies of ryots. The term Kudeemee is merely old. Khood Kusht appears to signify the occupancy of land which is peculiarly a ryot's own, and for which others can bring no claim on an equal footing. But distinctions of a broad and general kind are sufficiently noticeable. On the one hand, a Khood Kusht ryot is known by a continued occupancy; by an occupancy continued at his own will, if also by the silent sufferance of the zemindar; and, on the other, a temporary occupancy is most usually marked by circumstances which are incompatible with a permanent right, such as by recent and accidental acquisition, by variable occupation, or by a lease for a limited period. I should prefer therefore to take twelve years' occupancy recognized by the zemindar (mainly by the receipt of rent, but possibly also by other circumstances) to constitute a right of prescriptive occupancy, except that an occupancy renewable at the discretion of the zemindar may be inferred from the express terms of written engagement or from the general terms of a deed taken in connection with the circumstances under which the tenure originated or was continued. Where there is no written engagement, twelve years' occupancy alone will be sufficient to guarantee a permanent right, but if there be a deed without an express condition to quit, the mere termination of the lease will not import a limited occupancy unless that be inferrible from the circumstances of the case.

Section 3 of the Bill determines the principle by which ryots' lands are to be assessed. There are two scales: hereditary ryots being assessable at fixed rates, and other ryots being assessable at the ordinarily prevailing rates. No doubt it is not intended that a ryot holding land under prescriptive occupancy, who shall not have been previously liable to pay rent at an uniform rate, shall be entitled to a pottah limiting a demand which was before open to enhancement. I would say, however, that in practice our investigations for the determination of the amount of rent for which a ryot is liable are rarely aided by the ascertainment of uniformity whether as regards the fixed rates of Khood Kusht ryots or the ordinary rates of other ryots. There is nothing so unsatisfactory as a professed enquiry into rates. In fact, among ryots and tenants of all classes, there is little or no uniformity; and though in the necessary nature of things, rents paid approximate in rate, it is not because a rate is followed as a standard, but because by comparing the specific assessments of individuals one with another, an average, as a matter of account, may be struck. Upon this understanding provision, it seems to me, should be made for the regulation of the assessment of land held upon a right of prescriptive occupancy. The amount of rent in each case chargeable should be determined rather by the uniformity of previous payments than by enforcing conformity with the rent chargeable on neighbouring lands. Each man's liability should be regulated with reference to his own rights, not with reference to rights which it is not his business to maintain.

I would hold to the principle deducible from the rule inculcated in 1793. In Regulation VIII of that year, zemindars were told how they were to deal with their Khood Kusht ryots. The spirit of the permanent adjustment of the public revenue pervaded the legal relations of zemindars and tenants. The Permanent Settlement was not one-sided; permanent for the landlord and not

permanent for the tenant. On the contrary the *de facto* positions of the tenants were accepted as representatives of the available assets of estates upon which, except for special cause, zemindars could not legally encroach. In support of the statement, it is scarcely necessary that I should refer to sections 51 and 60, Regulation VIII of 1793. But the thorough recognition of the then purpose of the Legislature is of immense importance, and the quotation of a familiar law may be pardoned. As to dependent talookdars, it seems clear that the *status-quo* tied the hands of a zemindar. The rent payable to him before the completion of the settlement, that and no more should he continue to receive, and it was expressly stipulated that even though the revenue due by himself should have been increased, it was not legally competent to him, except upon proof of certain contingencies, to demand an increase from talookdars. So as to Khood Kusht ryots. The rule with respect to them was that, except in proof of fraud, no increase should be demanded contrary to previous engagements, *unless it was shown that the rents paid within the three years preceding the settlements* had been reduced below the ordinary pergunnah rate. Here what is remarkable is that enhancement depended upon the reduction having been made within the *last three years*. If the rent of the ryot had been levied at an uniform amount for more than three years, the assessment could not be revised. This law seems to me to furnish our best authority for defining the fixity of rents. The rule has been in force from 1793 downwards, supposing a Khood Kusht ryot to have paid his rent for six years, the plea that the rate chargeable on him was too low could not be heard. In 1793 he was secured by this law, and the law cannot be less a protector to the ryot now. In 1793 the rule was that the assessment of land held under a prescriptive right of occupancy might be revised on proof that within three years the rent had been reduced below current rates; and the principle to which practical effect was thus given appears to be necessarily based on the admission that *the payment of an uniform rent for more than* three years established in prescriptive right to the continuance of that payment in future years. And, further, I conceive that the constitutional theory of the Permanent Settlement did effectually embody permanence of assessment to the tenant as well as to the zemindar. This truth is too precious to be let sleep. It applies to other tenants as well as to prescriptive occupancy to land, but it applies also to these. The existence of the tenancy of land distinct from that of a tenant-at-will or of temporary lease-holder entered into the definitive basis of the settlement. The rent assets derivable from these permanent tenancies were the fixed assets of the settlement by which the sudder jumma of each State was regulated; and, except upon special cause shown, it was incompetent to zemindars to enhance the rent then leviable. The contract on the part of the State enforced a contract on the part of the zemindar. One portion of the rent of an estate was assumed to be a fixed (though unknown) sum, and the limitation of the demand of the State carried with it the stipulation that the rent payable by this particular class of tenants should be adhered to by the zemindar.

The tenancy of an estate at the time of the permanent settlement was, as it is now, divisible into three broad classes. First may be enumerated the class described as dependent talooks. The tenures included in this general classification are very variously designated according to the local nomenclature prevalent in each district, but the nature of the tenure in all cases imports a hereditary occupancy at a definite rent. Second is the more subordinate class that may or may not be included in the first, the jotes of ryots holding under a prescriptive occupancy. And third, ryots or other tenants that held only for a time. As to the first class, zemindars were declared to have no general right of enhancement. The rent then payable by the tenant was accepted as his ultimate liability. By the special and very limited conditions defined in section 51, Regulation VIII of 1793, a zemindar might show cause for raising his demand, but without such special cause the tenure of the tenant was unassailable. The same right is carried down to our own day by section 26, Act I of 1845. And again by section 60, Regulation VIII of 1793, as by Act I of 1845, the *existent* rights of the second class are equally respected.

It is for these reasons I say that the sudder jumma of the zemindar is not a constantly fixed and the rent of the tenant a constantly increasing quantity. Both by law are fixed: and it seems to me it should be our most earnest duty to give effect to the spirit of the law.

There can be no difficulty as to the rent of a jotedar holding land under a prescriptive occupancy from 1793 downwards. I do not speak only of the rate, but of the amount of rent. Rent so long paid cannot, in the spirit of the law, be open to enhancement.

The same rule should, I think, be extended to all under-tenures existing at the date of the Permanent Settlement; that is, I would abrogate the power reserved under special circumstances by section 51, Regulation VIII of 1793, to the zemindar to enhance the rent of talookdars or of other tenants holding under corresponding titles. Look at our present position. It is nearly 70 years since the settlement of 1790 was concluded. Throughout this long period the rent of the talookdar has been unchallenged. As a matter of course, so long as an estate is not sold for arrears of revenue, after such an interval the talookdars cannot be brought into court: but painful instances come before us in which sale-purchasers, strangers to everybody, strange to Government, strange to the tenantry, press their special rights to enhancement under the law. It is life or death to the talookdar. For long past half a century he or his ancestors have paid a fixed rent, which rent entered originally into the basis of the permanent settlement and suddenly a claim is made on him to pay three thousand rupees instead of one thousand. It is truly life or death to him. At most, under the law, a purchaser can be entitled to enhance only, if he prove that his predecessor, the zemindar of 1790 might have demanded an increase because the *special* custom of the district allowed it, or a temporary abatement had been granted, or because it was conformable to the conditions of the tenure. But the zemindar of 1790 had foregone his advantages: and after so great an interval to expose a tenant to a

revival of the claim which he practically felt himself unable to enforce, is to expose him to injurious peril.

I have said that with a prescriptive jotedar of 1790 there can be no difficulty. As to prescriptive rights of occupancy of a more recent origin, it seems to me that whatever difficulty as to the right of assessment may be presented, should be solved by the law, and not left to the unguided judgment of the courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy who shall have uniformly paid, with or without a pottah, a definite amount of rent, shall not be liable to a demand for enhancement.

Resident permanently occupying ryots are not beholden to zemindars for their rights. If upon any point we are competent to exert the sacred force of common law in this country it is this. Labour and occupancy make the right of the prescriptive ryot. By Regulation VIII of 1793 the revision of a prescriptive jotedar's assessment was limited to reduction effected within three years only: for later titles, I proposed twelve years. All ryots are not prescriptive ryots, but having defined the nature of a prescriptive ryot's tenure, we should at the same time define the interest which, by the declared principles of the law, should be assured to him.

I may not have leisure to discuss other portions of this excellent Bill, but the earlier sections form a detached subject, and to this for the present I confine myself. With respect to the temporary and limited tenures, I would only request attention to the concluding portion of section 2, which provides that no ryot shall, under any circumstances, be liable to any enhancement of rent in excess of the rates specified in section 3, that is, customary pergunnah rates Now the rule asserted in section 26, Act I of 1845, is that a zemindar may enhance "at discretion"; and as necessarily the limit of a local rate is inconsistent with a discretionary demand, the proposal in the Bill will supersede the present law.

APPENDIX B.

MINUTE.

Bill for the Recovery of Rents.

I AGREE generally with Mr. Currie as to the provisions of this Bill, and I would now transmit to him the various reports which have been made regarding it, in some of which will be found important discussions on points of principle and not a few valuable suggestions on matters of detail, especially in Mr. Samuell's report, wherein also will be seen some important remarks on the law as applicable to bhowlee tenures.

2. There is a great and very remarkable consent as to appeal among all the natives consulted. All desire an appeal, and consider any curtailment of this privilege a disadvantage and a grievance. I would yield to this undoubtedly popular feeling, giving the appeal to the Collector in cases below the value of Rs. 50, except as to matters beyond the mere questions of receipt and payment of money, on which the appeal should be to the judicial tribunal.

Mr. Raikes, Judge of the Sudder Court, observes that by numerous precedents since the enactment of section 26, Act I of 1845, it has been determined that an auction-purchaser may eject or enhance at discretion the rents of all tenants, except those of the description specially protected by the section in question; whereas sections 3 and 4 of the present Bill extend that protection to other classes, and thus run counter to former legislation and to rulings of the courts founded thereon. I apprehend, however, that the object of that part of the Bill was no other than that of Act I of 1845, namely, to declare and uphold the rights of Khood Kusht and Kudeemee ryots, which ryots I take to be the class intended by the expressions "hereditary ryots holding lands at fixed rates" and "resident ryots and cultivators". Perhaps the opportunity should be taken to define what has always needed definition, *viz.*, the term "Khood Kusht and Kudeemee ryots". Mr. Sconce, Judge of the Sudder Court, has suggested that instead of the terms used in sections 3 and 4 of the Bill, there should be substituted the words "ryots having a prescriptive right of occupancy"; and he would fix twelve years as the term of uninterrupted occupancy, after which a ryot should come under the description he proposes. To this I would assent, believing that in doing this we shall be discharging a heavy obligation towards the ryots, long unfulfilled by our legislation. I would also use means to show that this was the definition of a "Khood Kusht or Kudeemee ryot", elsewhere alluded to in our code.

4. Mr. Sconce further proposes to declare the actual rents of such ryots permanent as to amount. But as to this I hesitate, believing it better to leave this to be determined by the new rent courts, as it now is in suits in the ordinary courts for what is termed nishust-jumma. And in the enumeration of the kinds of suits to be cognizable by the new courts I would distinctly insert suits for settling or fixing or enhancing rents.

5. There is some variation of opinion among the officers consulted as to the restriction put upon zemindars by section 8 of the Bill in respect to compelling the personal attendance of their ryots. Upon this I agree fully with Mr. Samuells that although the withdrawal of this power will be severely felt by some small zemindars whose ryots have easy means of escape from their power, yet the present system leads to such grave abuses and allows of such intolerable oppression that it ought, without doubt, to be amended in the manner proposed by this Bill.

6. Nothing which is stated by any of the authorities who have reported on this Bill has altered my opinion in favour of constituting the new courts in the hands of Collectors and Deputy Collectors instead of Moonsifs. Deputy Collectors, very carefully chosen, will shortly be stationed over every district in the proportion of one to every three thanas; and, in the first

instance at all events, it will only be by putting the new jurisdiction into the hands of these officers that the essential protection and security of the ryot will be provided for. Hereafter it may be possible to use the Moonsifs in this way, but not now. And to employ the Moonsifs in administering the new law at first will be to risk all its proposed advantages.

F. J. HALLIDAY.

The 27th November 1858.

I COULD have wished for the benefit of a report from the Board of Revenue on this very important subject; but I have waited long for it, and have been obliged at last to write my opinion without it. Hereafter should it, when received, suggest any further observations, I shall not fail to supply them.

F. J. H.

THE LANDLORD AND TENANT BILL.

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SCHEDULES.

A

BILL

TO

Consolidate and Amend the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

PRELIMINARY.

Consider Calcutta.
[1] The Jalpaigori and Darjiling Divisions.
The Hill Tracts of Chittagong.
The Sonthal Parganahs; *see* I. L. R. 4 Calc.:
The Chota Nagpore Division.
The Mahals of Angul and Banki.

Short title. 1. This Act may be called "The Bengal Landlord and Tenant Act, 1880":

Local extent. It extends to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Division of Orissa and the Scheduled Districts specified in the third part of the First Schedule of "The Scheduled Districts Act, 1874[1]": it shall be lawful for the said Lieutenant-Governor to extend the whole or any part of this Act to the Division of Orissa by a notification published in the *Calcutta Gazette*; and from the date of the publication of the said notification this Act or such part as may be specified in such notification shall have operation in the said Division.

Commencement. It shall come into force on the day of 1880.

Repeal. 2. The enactments specified in the First Schedule hereto annexed are hereby repealed from and after the commencement of this Act. When this Act or any part of it is extended to the Division of Orissa, such of the said enactments as are in force in that Division, or, where a part only is extended, so much of them as is inconsistent with such part, shall cease to have operation in the said division:

provided that—

(1) *any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof:*

(2) *this repeal shall not affect*

(a) *the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder; nor*

(b) *any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment hereby repealed; nor*

(c) *any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid; and any such investigation, legal proceeding and remedy may be carried on as if this Act had not passed: and*

See N. W. P. Act XVIII, s. 2.

(3) *this repeal shall not revive any enactment, right, privilege, matter, or thing not in force or existing at the commencement of this Act.*

Article 1 of the Digest.

Definitions of terms.

3. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:—

Estate.

"Estate" means land included under one entry in any of the General Registers of Revenue-paying Lands and Revenue-free Lands, prepared and maintained under the law for the time being in force by the Collector of a District:

Proprietor.

"Proprietor" means a person who as owner is solely or jointly in possession of an estate or a share of, or interest in, an estate:

Tenure.

"Tenure" means (1) a rent-paying interest in land immediately subordinate to that of a proprietor and superior to that of a ryot; (2) a revenue-free or rent-free interest in land, when there exists no rent-paying interest in the same land between the proprietary interest and such revenue-free or rent-free interest:

Illustrations.

(*a*) A *patni* interest is a tenure.

(*b*) An *ijarah* or farm for a term of years is a tenure.

(*c*) A holds 120 bighas of valid revenue-free land situate within the limits of B's revenue-paying estate and not included under any entry in the General Register of Revenue-free Lands maintained by the Collector of the District under the law for the time being in force. This land is in the actual possession of ryots who pay their rents to A. The interest of A in such land is a tenure.

(*d*) B, the proprietor of a revenue-paying estate, makes a rent-free grant to A of 50 bighas of land included in such estate and in the actual possession of ryots. A, by virtue of such grant, becomes entitled to the rents payable by these ryots. A's interest in these 50 bighas is a tenure.

Tenure-holder.

"Tenure-holder" means a person who as owner is solely or jointly in possession of a tenure or a share of, or interest in, a tenure:

Under-tenure.

"Under-tenure" means (1) a rent-paying interest in land subordinate to that of a tenure-holder and superior to that of a ryot; (2) a rent-free interest in land when there exists a rent-paying interest in ~~the same land~~ between the proprietary interest and such rent-free interest:

Where there are more under-tenures than one in the same land, the under-tenure immediately subordinate to that of the tenure-holder is termed an

Under-tenure of the first degree.

"under-tenure of the first degree"; the under-tenure immediately subordinate to the under-tenure last mentioned is termed an

Under-tenure of the second degree.

"under-tenure of the second degree"; the under-tenure immediately subordinate to that last mentioned is termed an

Under-tenure of the third degree.

"under-tenure of the third degree"; and so on in order:

Illustrations.

(*a*) A *dar-patni* interest is an under-tenure of the first degree.

(*b*) A *se-patni* interest is an under-tenure of the second degree.

(*c*) A *dar-ijarah* is an under-tenure.

(*d*) B holds a *patni* tenure of 2,000 bighas of land under C, the proprietor of the Gopalpur estate. B makes a rent-free grant to A of 80 out of the 2,000 bighas. These 80 bighas are in the actual possession of ryots, who after the grant pay their rents to A. The interest of A is an under-tenure.

"Under-tenure-holder" means a person who as owner is solely or jointly in possession of an under-tenure, or a share of, or interest in, an under-tenure:

Under-tenure-holder.

Subject to the provisions of section 11 "ryot" *means a person who holds land, or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it or bringing it under cultivation. A person cultivates land or brings land under cultivation within the meaning of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers, or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons:*

Ryot.

"Holding" means the interest of a ryot in the land which *he holds or occupies and cultivates, and which forms the subject of a separate tenancy.*

Holding.

"Occupancy holding" means a holding in which a ryot *or any such tenant as is mentioned in section 41,* has a right of occupancy:

Occupancy holding.

"Under-ryot" means a person to whom a ryot has sublet his holding or a portion thereof:

Under-ryot.

"Rent" means whatever is payable or deliverable by a tenure-holder, under-tenure-holder or occupancy-ryot to the proprietor, tenure-holder, or under-tenure-holder possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land or for any rights of pasturage, forest rights, fisheries, or the like:

Rent.

Consider the definition of "land" in the General Clauses Act V (B.C.) of 1867.

"Land" *includes woods and water thereupon:*

Land.

when applied to land cultivated or held by a ryot, it means land used or intended to be used for agricultural or horticultural purposes, or the like. In Chapter XVIII it *means (a) tenures, undertenures, and holdings; (b) land used or let to be used for agriculture, horticulture, pasture, or other similar purpose, or for dwelling-houses, manufactures, or other similar buildings; and (c) rights of pasturage, forest rights, fisheries, and the like:*

Explanation.—Basti or homestead land is land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding:

"Tenant" means a person liable to pay or deliver rent:

Tenant.

"Landlord" means a person to whom a tenant is liable to pay or deliver rent:

Landlord.

"Lease" or "Pottah" means a written instrument creating or continuing the relation of landlord and tenant, and executed by the landlord in favour of the tenant:

Lease. Pottah.

"Kabúliyat" means a written instrument creating or continuing the relation of landlord and tenant, and executed by the tenant in favour of

Kabúliyat.

the landlord, and includes the counterpart of a lease or pottah:

Collectorate.

"Collectorate" means the district to which a Collector is appointed, and does not include lands situate beyond the local limits of such district, but forming part of an estate, the revenue of which is paid into the Treasury of the said district:

Signed.

"Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to:

Judge.

"Judge" means the presiding officer of a Court:

Section.

"Section" means a section of this Act.

Article 2 of the Digest.

4. Nothing in this Act is intended to affect—

Saving of custom, &c.

(*a*) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions;

(*b*) the powers and duties of Settlement Officers as by law defined and limited;

(*c*) the provisions of any special or local law not hereby repealed either expressly or by necessary implication[1].

[1] L. R., 3 C. P. 415; 1 Ex. D. 411.

Illustration.

The custom of a ryot subletting his land for a term, or from year to year, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. It is not intended that such custom should be affected by this Act.

Division of Act into Chapters and Parts.

5. This Act is divided into Parts and Chapters, as follows:—

PART I.—*The Substantive Law of Landlord and Tenant.*

Chapter I.—Of Tenure-holders and Under-tenure-holders.
Chapter II.—Of Ryots entitled to hold land at Fixed Rates.
Chapter III.—Of Ryots who have held Land for Twelve years and acquired a Right of Occupancy.
Chapter IV.—Of Ryots who have held Land for Three or more, but less than Twelve, years.
Chapter V.—Of Ryots who have held Land for less than Three years.
Chapter VI.—Of the use of Land for Building Purposes.
Chapter VII.—Of Merger.
Chapter VIII.—Of the Registration of Transfers of Tenures, Under-tenures, and Occupancy-holdings.
Chapter IX.—Of Rent, Instalments of Rent, Receipts for Rent, Deposit of Rent, Apportionment of Rent, and Hypothecation for Rent.
Chapter X.—Of Coparceners.
Chapter XI.—Of some Miscellaneous Rights of Landlords and Tenants.
Chapter XII.—Of Special Provisions for Behar.
Chapter XIII.—Of Damages and Penalties.
Chapter XIV.—Of Limitation.

PART II.—*The Procedure in suits between Landlords and Tenants.*

Chapter XV.—Of Proceedings to enhance the Rent payable in money by Ryots having a right of Occupancy, and by Tenure-holders and Under-tenure-holders.

Chapter XVI.—Of the Recovery of Arrears of Rent in certain cases by Summary Sale without Decree.

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PART I.

THE SUBSTANTIVE LAW OF LANDLORD AND TENANT.

CHAPTER I.—OF TENURE-HOLDERS AND UNDER-TENURE-HOLDERS.

Article 20 of the Digest.

Tenure or under-tenure held at fixed rent since Permanent Settlement not liable to enhancement

6. (*a*) No *tenure-holder or under tenure-holder*, who otherwise than under a terminable lease holds his tenure or under-tenure at a fixed rent which has not been changed from the time of the Permanent Settlement of Bengal, Behar and Orissa, *made in the year of the Christian era one thousand seven hundred and ninety-three*, shall be liable to any enhancement of such rent.

Article 21 of the Digest.

Presumption from twenty years' holding at unchanged rent

(*b*) Whenever it shall be proved in any suit under this Act that the rate of rent, at which any such tenure or under-tenure is held, has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that such tenure or under-tenure has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that *such tenure or under-tenure was created*, or such rent fixed at some later period

Article 19 of the Digest.

Exception.—In the case of a tenure or under-tenure situate in an estate not permanently settled such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue Authority empowered by Government to make definitively or confirm Settlements.

Tenure or under tenure held since Permanent Settlement liable to enhancement only in certain cases

7. No *tenure or under-tenure* which has been held since the time of *such* Permanent Settlement is liable to enhancement save and except upon proof (1) that the landlord under whom it is held is entitled to enhance the rent thereof either (*a*) by the special custom of the district, or (*b*) by the conditions under which the tenure or under-tenure is held; or (2) that the tenure-

holder or under-tenure-holder by receiving abatements from his rent has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Explanation I.—In order to entitle a tenure-holder or under-tenure-holder to the benefit of this section, it is sufficient for him to show that his tenure or under-tenure existed and could have been registered in the Collector's office at the time of the Permanent Settlement, even though it were not actually registered.

Explanation II.—An abatement of rent granted to a tenure-holder or under-tenure-holder for land taken under the provisions of "The Land Acquisition Act, 1870", is not an abatement within the meaning of this section. New.

Tenure-holder or under-tenure-holder liable to enhancement for land gained by alluvion and entitled to abatement for land lost by diluvion.

8. Notwithstanding anything contained in section 6 or in section 7, every tenure-holder and under-tenure-holder shall, in the absence of an express contract to the contrary be liable to pay additional rent for land added to his tenure or under tenure by alluvion, and shall be entitled to abatement of rent in respect of any diminution of the area of his tenure or under-tenure caused by diluvion or otherwise. Such increase or abatement of rent shall bear to the rent previously paid the same proportion which the increase or diminution of area bears to the previous area of the tenure or under-tenure.

As to the *forum*, see section 132.

Limits of enhancement of rent of tenures and under-tenures.

9. In any case in which the rate of rent of a tenure-holder or under-tenure-holder is liable to enhancement, such rate may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity; or, where no such customary rate exists *or in any case falling within the Exception to section 6* up to such limit *as to the Court shall appear fair and equitable: provided that in cases where no customary rate exists* the profit of such tenure-holder or under-tenure-holder shall not exceed *thirty* per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting such rents. *If such tenure-holder himself occupies any portion of the land included in his tenure or under-tenure or has made a rent-free grant of any portion of such land, a reasonable rent shall be calculated for such portions and included in the gross rents aforesaid.* New.

Enhanced rent not to be more than double the previous rent. Enhancement may be gradual.

10. (*a*) In any case in which the rent of a tenure-holder or under-tenure-holder is found to be liable to enhancement, the enhanced rent shall not be more than double the rent previously payable, and the Court may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for ten years.

(*b*) When the rent of a tenure-holder or under-tenure-holder has been enhanced by a Civil Court under the provisions of this Act, such rent shall not be liable to alteration for a period of ten years next ensuing after the date of the final order so enhancing such rent.

Explanation.—An increase of rent on account

of land gained by alluvion or a decrease of rent on account of land lost by diluvion is not an alteration within the meaning of clause (b) of this section.

New.

Person, to whom more than 100 standard bighas demised by Government or a proprietor, otherwise than for a term or year by year, to be deemed a tenure-holder within the meaning of sections 8, 9 and 10.

11. (*a*) Notwithstanding any custom or contract to the contrary, every person, to whom more than one hundred standard bighas of land have been demised by a single demise, otherwise than for a term or year by year, by Government or by a proprietor, whether before or after the commencement of this Act, and who has obtained possession of the land so demised, shall be deemed to be a tenure-holder within the meaning of sections 8, 9 and 10. Every such tenure which has been held by any such person or his heir for twelve years, shall be permanent and transferable.

Person, to whom more than 100 standard bighas demised by tenure-holder or under-tenure-holder otherwise than for a term or year by year, to be deemed an under-tenure-holder within the meaning of sections 8, 9 and 10.

(*b*.) Notwithstanding any custom or contract to the contrary, every person to whom more than one hundred standard bighas of land have been demised by a single demise, otherwise than for a term or year by year, by a tenure-holder or under-tenure-holder, whether before or after the commencement of this Act, and who has obtained possession of the land so demised, shall be deemed to be an under tenure-holder within the meaning of sections 8, 9 and 10. Every such under-tenure, which has been held by any such person, or his heir for twelve years, shall be permanent and transferable.

New.

Limit of enhancement of rent of tenure-holder or under-tenure-holder mentioned in section 11, if more than half the land demised was unreclaimed at the time of the demise.

12. If more than half the land included in any such single demise, as is mentioned in section 11, was unreclaimed at the time of making such demise, and if the reclamation of such unreclaimed land were one of the objects of such demise, and such unreclaimed land were reclaimed accordingly, the rent of any such tenure-holder or under-tenure-holder as is mentioned in section 11, notwithstanding anything contained in section 9, shall not be enhanced, so as to reduce his profit below twenty per centum of the balance mentioned in, and calculated according to the provisions of, section 9; and the Court may, in any case in which such rent is enhanced, allow to any such tenure-holder or under-tenure-holder by way of profit any such share of the said balance exceeding twenty per centum thereof, as to such Court may appear fair and equitable.

New.

Permanent tenures and under-tenures declared heritable, devisable, and transferable.

13. All permanent tenures and under-tenures are declared to be heritable, *devisable*, capable of being transferred by sale, gift, or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts, as other immovable property.

Reg VIII of 1819, ss 1 and 3 Article 26 of the Digest.

Legal incidents of a patni talook.

14. (*a*) A patni talook is a tenure held at a rent fixed in perpetuity, heritable, *devisable*, capable of being transferred by sale, gift, or otherwise at the discretion of the holder, answerable for the personal debts and subject to the process of the Civil Courts in the same manner as other immovable property.

(*b*) A patni tenure is not liable to be cancelled for default in payment of the rent thereof, but such tenure may be brought to sale by public auction, and the defaulting patnidar or holder of such patni tenure is entitled, subject to the provisions of this Act, to any surplus proceeds of sale beyond the arrears of rent due upon such tenure.

(*c*) A patnidar is entitled to let out the lands composing his tenure in any manner most conducive to his interest, and any engagements entered into by such patnidar with others are legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagement shall operate so as to prejudice the right of the proprietor to hold the patni tenure answerable for any arrear of his rent in the state in which he granted it, and free of all incumbrances resulting from the act of his tenant, the patnidar.

Right to sublet.

Explanation.—In any case in which the interest in land created by a lease is therein denominated a patni taluk or patni-tenure, it shall be presumed that a tenure having the incidents specified in this section is intended.

15. The provisions of section 14 shall apply, *mutatis mutandis*, to the following under-tenures, namely, a *patni taluk* of the second degree, which is termed a "darpatni" a *patni taluk* of the third degree, which is termed a "sepatni", and a *patni taluk* of the fourth degree, which is termed a "chahar-patni".

Provisions of section 14 applicable *mutatis mutandis*, to *patni* under-tenures.

CHAPTER II.—OF RYOTS ENTITLED TO HOLD LAND AT FIXED RATES.

16. Ryots who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement of *Bengal, Behar, and Orissa made in the year of the Christian era one thousand seven hundred and ninety-three,* are entitled to *continue to hold their lands* at those rates.

Article 37 of the Digest.

Ryots holding land at rates not changed since Permanent Settlement to continue to hold at those rates.

Explanation I.—In the case of rent payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of this section.

Explanation II.—The operation of this section is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which formed with it a single holding, or amalgamated with other land into one holding, if the rate of rent has not been altered thereby.

17. Whenever it shall be proved in any suit *or proceeding* that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that the land has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Article 38 of the Digest.

Presumption if rent of land has not been changed for 20 years before suit.

Explanation.—Such presumption may be made even though the ryot do not plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been changed since that time, provided

A similar explanation may perhaps be well appended to section.

that there be nothing in his statements inconsistent with its having been so held.

Exception in the case of temporarily-settled estates.

Exception.—In the case of a ryot holding land in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such land upon the expiry of a temporary settlement of the revenue, unless the right to hold such land for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue Authority empowered by Government to make definitively or to confirm settlements.

Now.

Ryots holding at fixed rates are liable to enhancement for alluviated land and entitled to abatement for diluviated land under the N. W. P. Act XVIII of 1873, s. 18.

Ryot holding at fixed rates liable to pay additional rent for land gained by alluvion and entitled to abatement for and diluviated.

18. A ryot entitled to hold land at fixed rates shall be liable to pay additional rent for land added to his holding by alluvion and shall be entitled to abatement of rent in respect of any diminution of the area of his holding caused by diluvion. Such increase or abatement of rent shall bear to the rent previously paid the same proportion which the increase or diminution of area respectively bears to the previous area of such holding.

CHAPTER III.—OF RYOTS WHO HAVE HELD LAND FOR TWELVE YEARS AND ACQUIRED A RIGHT OF OCCUPANCY.

See Article 40 of the Digest.

Right of occupancy acquired by holding, or occupying and cultivating for twelve years.

19. Subject to the provisions of section 11, any ryot, who for a continuous period of twelve years has as a tenant held, or has as a tenant occupied and cultivated land, and paid rent for the same, has a right of occupancy in the land so held, or occupied and cultivated by him, whether held or occupied under a lease or otherwise.

Illustration.

A holds and cultivates lands for eight years and pays rent for the same. In the ninth year the land is diluviated and the site submerged, and A ceases to pay rent Seven years afterwards, land is reformed on the same site. A has not a right of occupancy in the land so reformed.

Explanation 1.—In computing such period of twelve years, the time during which his father or any other person from whom a ryot has inherited, has held or occupied such land, may be added to the time during which the ryot has himself held or occupied; but, in case of a transfer *otherwise than by inheritance* before the completion of the twelve years, *whether with or without the consent of the landlord*, the time during which the transferrer has held or occupied may not be added to the time during which the transferee has held or occupied, *unless such landlord has expressly consented in writing that it shall be so added.*

Explanation 2.—A ryot will not be precluded from acquiring a right of occupancy by the fact that the landlord under whom he has held or occupied for the whole or part of such period of twelve years had no title in the land so held or occupied; or by the fact that such landlord was a coparcener.

Explanation 3.—A right of occupancy may be acquired:—

(*a*) by a person holding or occupying land immediately under, and paying rent directly to, a *mukarraridar* or *ijaradar*;

(*b*) by a person holding or occupying land

immediately under, and paying rent directly to, any such tenure-holder or undertenure-holder as is mentioned in section 11, if such person is not himself an under-tenure-holder, and if, before he was let into possession, no other person has acquired a right of occupancy in the same land under the provisions of this Act, or of Act X of 1859, or of Act VIII of 1869 of the Bengal Council;

(*c*) by a person holding or occupying land immediately under, and paying rent directly to, a ryot having a right of occupancy therein, if such land is held or occupied otherwise than for a term, or year by year;

(*d*) by a person holding or occupying *khamar*, *nijjote*, or *sir* land immediately under, and paying rent directly to, a proprietor, if such land is held or occupied otherwise than for a term, or year by year.

Explanation 4.—A right of occupancy may not be acquired—

(*a*) by a proprietor in land which is a portion of his estate;

(*b*) by any such tenure-holder, as is mentioned in section 6, 7, 8, 9, 10, 11, 12 or 13, in land, which is a portion of his tenure;

(*c*) by any such under-tenure-holder, as is mentioned in section 6, 7, 8, 9, 10, 11, 12 or 13, in land, which is a portion of his under-tenure;

(*d*) by a *mukarraridar* or *istemrardar* in land in which he has a *mukarrari* or *istemrari* interest;

(*e*) by an *ijarahdar* or farmer of rents, in land which is a portion of his *ijarah*: provided that a right of occupancy otherwise duly acquired in land shall not be lost by subsequently holding such land as part of an *ijarah* or farm;

(*f*) by a person holding or occupying land immediately under, and paying rent directly to, a ryot having a right of occupancy therein, if such land is held for a term, or year by year;

(*g*) by a person holding or occupying *khamar*, *nijjote*, or *sir* land immediately under, and paying rent directly to, a proprietor, if such land is held for a term, or year by year.

(*h*) by a tenant, who, when he was first let into possession of land by his landlord, contracted in writing with such landlord that a right of occupancy should not be acquired in such land, if such written contract has been duly registered. No contract shall in any other case debar a tenant from acquiring a right of occupancy.

Legal incidents of a right of occupancy.

20. The following legal incidents shall appertain to every holding in which a right of occupancy has been acquired under this Act or any Act repealed thereby; that is to say,—

Saleable in execution of a decree for arrears of rent only.

(*a*) It shall be saleable in execution of any decree passed for arrears of the rent thereof, but shall not be saleable in execution of any other decree.

It is provided in section 64 that a landlord who has obtained a decree must sell before resorting to any other process of execution. The bidding at the sale is open to all.—*See* section 208, para. (1).

*Provision for Registration of transfers and successions is made elsewhere—See Chapter VIII, ss. 46—54.

Transferable by sale or gift, and devisable.

(*b*) It may be transferred by private sale or gift, and may be devised by will, and the consent of the landlord shall not be necessary to the validity of any such transfer or devise: provided that no transfer or devise of a portion only of such holding shall be valid as against the landlord without his written consent. *A transfer under this clause is not complete until possession has been obtained by the transferee.*

Heritable according to the law of inheritance of the tenant.

(*c*) It shall be heritable *according to the law of inheritance to which the tenant is subject, but no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent.* If a ryot who has a right of occupancy in land dies, leaving no heirs and without having made a will, the landlord shall be entitled to take possession of such land.

May not be mortgaged.

(*d*) No ryot having a right of occupancy in land shall be entitled to mortgage such right or such land or any portion thereof, and any such mortgage shall be void to all intents and purposes, nor shall any Court of Justice take cognizance thereof or give effect thereto in any judicial proceeding whatever.

Ryot may not be ejected from land in which he has such right.

(*e*) No ryot may be ejected from land in which he has a right of occupancy, whether for non-payment of rent or other cause *not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof. Any such ryot, who is ejected on account of a breach of any such stipulation, shall be entitled to compensation for improvements under the provisions of sections* 29 *and* 30.

Rent of occupancy ryot payable in kind not to exceed fifty per cent. of the gross produce in the case of staple crops. In the case of other crops, a special contract in writing may be made and enforced; if no such contract, value of twenty-five per cent. of staple crops may be recovered.

21. When the rent payable by a ryot for an occupancy holding is paid in kind, and such ryot does not receive from his landlord seed or labour or other assistance in producing the crop, such rent shall not exceed fifty per centum of the gross produce in the case of any such staple crop as is mentioned in clause (*c*) of section 23. In the case of crops other than such staple crops, if the landlord and tenant have contracted in writing that a certain share of the gross produce shall be paid to the landlord as rent, such contract may be enforced; but, in the absence of any such contract, the landlord shall not be entitled to recover any other or greater rent than twenty-five per centum of the average annual value of the gross produce calculated as provided in clause (*c*) of section 23.

Article 43 of the Digest.

Rent of ryot having a right of occupancy may be enhanced on what grounds.

22. Subject to the other provisions of this Act, a landlord is entitled to enhance the rent payable to him in money by a ryot for land in which such ryot has a right of occupancy. Such rent may be enhanced upon any one or more of the following grounds, *and not otherwise*:—

(1) on the ground that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages *in the vicinity*;

(2) on the ground that the quantity of land held by such ryot has been *shown* by measurement to be greater than the quantity for which rent has been previously paid by him;

(3) on the ground that the productive powers of the land held by such ryot *as compared with such powers at the time when the rent was fixed, or at any subsequent time,* have increased otherwise than by the agency or at the expense of the ryot *and from causes not merely temporary or casual;*

(4) on the ground that the *prices* of produce *in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time,* have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual.*

Illustrations.

Of Ground (1).

(*a*) *A's* paternal grandfather seventy years ago reclaimed and rendered culturable the land which *A* now holds and cultivates, and which came to him by inheritance from such paternal grandfather. *B* has for fifteen years held and cultivated land which was in a culturable state when *B* was first let into possession thereof. *A* and *B* have each therefore a right of occupancy. There is evidence that the hereditary descendant of a ryot, who being the first settler reclaimed the land, has a special privilege. *A* and *B* are not ryots of the same class.

(*b*) *A* is in possession of a holding which has descended to him from his great-grandfather who held it at the time of the Permanent Settlement. *B* was let into possession of his holding twenty years ago. There is evidence that the descendants of ryots, who were in possession at the time of the Permanent Settlement, customarily hold at rates less by four annas in the rupee than ryots who have come into possession at a later period. *A* and *B* are not ryots of the same class.

(*c*) *A* has acquired a right of occupancy in land which he holds under, and for which he pays rent to, a proprietor. *B* has acquired a right of occupancy under the circumstances mentioned in clause (*c*) of Explanation 3 of section 19. *A* and *B* are not ryots of the same class.

Of Ground (2).

(*a*) *A*, ت ryot, holds his land at one rupee per bigha and has been paying an annual rent of Rs. 17 as for 17 bighas. A measurement shows that he holds 23 bighas, and the whole of this land is of the same quality. His rent can be enhanced to Rs. 23.

(*b*) *A*, a ryot, has a holding usually described in the *jama-wasil-baki* papers and the ryot's receipts as comprising 27 bighas, and the rent paid for which is Rs. 33-12. No measurement of this holding has at any time been made, and there is no allegation that its area has been diminished by diluvion; but 15 bighas of land clearly distinguishable are shown by measurement to have been added to the holding by alluvion. This accreted land is of a better quality than any portion of the original holding, and it is shown that two rupees per bigha is the prevailing rate paid by ryots of the same class with *A* for land of a similar description and with similar advantages in the vicinity. *A* is liable to pay Rs. 30 in addition to his former rent of Rs. 33-12.

(*c*) *A* was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880 the land within these boundaries is measured and found to be 45 bighas. *A* is not liable to pay enhanced rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease.

(*d*) *A* was let into possession of a holding in 1850 under a written lease, which describes the holding as comprising 50 bighas, more or less, and gives the boundaries. The land is situate in a village which in 1850 consisted chiefly of uncleared *jangal*, and the boundaries are inexact and

As to (*c*) and (*d*) *see* IX, B. L. P., 169. IV, Kent's Commentaries, § 466: II, Smith, L. C. 523 Taylor on Evidence, §§ 1104-1105.

indefinite. In 1880 *A* is found to be in possession of 200 bighas of cultivated land, to which the description by boundaries is applicable. *A* is liable to enhancement.

XXII, W. R. 246 · 1 B. L. R. A. C. 21 : Hay's Rep. 1863, p 560.

(*c*) *A* held and cultivated 30 bighas of land at one rupee per bigha from 1863 to 1875. The land so regularly cultivated by him up to 1875 was then bounded on the east by uncleared waste land belonging to *A*'s landlord. In 1876 *A* began to encroach upon this waste land, and in 1880 is found to be, without the acquiescence of his landlord, in possession of 20 bighas of this waste land in addition to the 30 bighas originally held and cultivated by him. *A*'s landlord may either treat *A* as a trespasser in respect of these 20 bighas, and sue to eject him therefrom and to recover from him mesne profits in respect thereof; or may accept *A* as his tenant for the 20 bighas as an addition to *A*'s original holding of 30 bighas. In the latter case *A* shall be liable to pay additional or enhanced rent for the 20 bighas of land.

Meaning of term "landlord".

Explanation I.—No person is a "landlord" within the meaning of this section who has not—

New

(*a*) a permanent transferable interest in the land of which the rent is payable to him: or

New.

(*b*) a farming or leasehold interest in the land of which the rent is payable to him.

Meaning of term "land".

Explanation II.—The term "land" in this section means land used or intended to be used for agriculture, horticulture, pasture, or other similar purpose. When a landlord proceeds upon the fourth ground to enhance the rent of land used or intended to be used for pasture, such rent may be so fixed that the enhanced rate shall bear to the rate then prevailing for arable land in the vicinity the same proportion which the former rate bore to the similar rate prevailing at the time when such former rent was fixed, or at any subsequent time.

New.

Rate fixed by Collector to be deemed a prevailing rate.

Explanation III.—When a table of rates has been prepared and sanctioned in the manner hereafter in this Act provided, any such rate so fixed shall be taken to be a prevailing rate within the meaning of the first ground of enhancement specified in this section.

New

Landlord entitled to whole increment, when effected solely by his agency or at his expense—otherwise to half only.

23. (*a.*) In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground specified in section 22, if the increase of the productive powers of the land or of the price of produce has been wholly effected by the agency or at the expense of the landlord, such landlord shall be entitled to the whole of the benefit of such increase. If such increase has taken place otherwise than by the agency or at the expense of the landlord or the ryot, such landlord shall be entitled to one-half of such benefit only.

Now.

Limit to enhancement upon the third or fourth ground.

(*b.*) In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground specified in section 22, the enhanced rent shall not be more than double the rent previously paid; and shall not bear a higher proportion to such rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or the former prices. In estimating the increased productive powers or the increased prices, the Court or the Col-

Calculation to be based upon a reasonable average of years.

lector shall have regard to such an average of years as under the circumstances may appear reasonable.

Rent enhanced on first, third, or fourth ground not to exceed one-fourth of the average annual value of gross produce, calculated for staple crops.

(*c*.) *In any case in which the rent of a ryot having a right of occupancy is enhanced upon the first, third, or fourth ground specified in section 22, the enhanced rent shall not be more than one-fourth, or, in the case of any such ryot as is mentioned in clause (c) of explanation 3 of section 19, three-tenths of the average annual value of the gross produce of the land for which such rent is payable. Such average annual value shall be calculated for staple crops only, and upon the prices at harvest time of a reasonable number of years. The Board of Revenue may from time to time make, and when made, alter, add to, and revoke rules for calculating such average annual value, and shall also determine and notify by an advertisement in the* Calcutta Gazette *what crops shall be deemed to be staple crops, for the purposes of such calculation, in any district or in any area less than a district to be described in such notification. When such staple crops have been so determined and notified for any such district or area, one year's previous notice shall be given of any alterations in such staples.*

Board of Revenue to make rules for calculating average value and to determine and notify staples.

(*d*.) The Court or the Collector may, if it seems expedient in any case in which enhancement of the rent of an occupancy holding is allowed direct that such enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement allowed has been reached. New.

Progressive enhancement may be directed.

(*e*.) In any case in which the rent of a ryot is found to be liable to enhancement on the fourth ground specified in section 22, if such ryot has been paying an annual sum by way of road cess, public works cess, or the like, the enhanced rent which such ryot shall be otherwise found liable to pay shall be reduced by an amount equal to such annual sum.

Ryot entitled to a deduction for road cess, &c.

Illustration.

A, a ryot having a right of occupancy, was paying an annual rent of Rs. 8. It is found in enhancement proceedings that this rent can fairly be enhanced on the fourth ground to Rs. 12; but, as *A* was paying four annas annually as road cess, the amount of rent which *A* will be liable to pay in future will be Rs. 12, less 4 annas, or Rs. 11-12.

24. The rent of a ryot having a right of occupancy shall not be liable to enhancement (1) when he holds under a written lease for a term certain, which has not expired; (2) *when such ryot and his landlord have contracted that such rent shall not be enhanced.*

No enhancement in certain cases of the rent of a ryot having a right of occupancy.

25. *Subject to the provisions of clause* (*a*) *of section 105, of clause* (*a*) *of section 111, and of section 114, a* ryot having a right of occupancy is entitled, on any one or more of the following grounds and not otherwise, to an abatement of the rent payable by him in money, namely :—

Ryot having right of occupancy when entitled to abatement of rent.

(1) on the ground that the quantity of land held by such ryot has been shown by measurement to be less than the quantity for which rent has been previously paid by him;

(2) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual;

(3) on the ground that the prices of produce in the locality or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual.

CHAPTER IV.—OF RYOTS WHO HAVE HELD LAND FOR THREE OR MORE BUT LESS THAN TWELVE YEARS.

Ryot who has cultivated or held land for three years protected from arbitrary eviction.

26. Any ryot, who for a continuous period of three or more, but less than twelve years has as a tenant held, or has as a tenant occupied and cultivated land other than *khamar*, *nijjote* or *sir* land *let on lease for a term or year by year*, shall not be evicted from such land by the landlord thereof otherwise than (*a*) for non-payment of rent, or (*b*) for a breach of some condition of his lease which expressly provides that eviction shall be the penalty of such breach, or (*c*) for refusal to pay an increased rent demanded by his landlord. Such increased rent and the grounds upon which it is demanded shall be specified in a notice which shall be served upon such ryot (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Jeyt; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Pous. Such grounds shall not be limited by any of the provisions of this Act.

Notice of demand of increased rent to be served on ryot.

Any such ryot served with such notice to be liable for the increased rent demanded, if he remains in possession of the land.

27. (*a*) When any such ryot has been served with a notice of demand of increased rent under the provisions of section 26, he shall be liable to pay such increased rent from the first day of the year next ensuing after the service of such notice, if he remains in possession of the land mentioned in such notice after such day.

Any such ryot, if unwilling to pay such increased rent may relinquish the land.

(*b*) If such ryot is unwilling to pay the increased rent demanded and desires to give up the land mentioned in the notice, he may at any time before the end of the year, in which such notice is served, give notice of relinquishment to his landlord. Such notice of relinquishment shall be served through the Civil Court, and shall, if *such landlord, within the first month of the year next ensuing after service of notice, pays to such ryot or lodges in Court the compensation for disturbance provided by section* 28, determine the tenancy of such land as between them.

Any such ryot so relinquishing his land entitled to one year's increased rent as compensation for disturbance.

28. Any such ryot, who, being unwilling to pay the increased rent demanded for the land held by him, relinquishes such land in the manner stated in clause (*b*) of section 27, shall be entitled to receive as compensation for disturbance a sum equal to the increased rent of one year as demanded in the notice aforesaid. Such ryot, if such sum is not paid to him or lodged in Court as provided in the said clause (*b*), shall be entitled to retain possession of the land at the previous rent, or may at his option sue for such amount in the Civil Court.

Compensation for Improvements

In the case of a ryot who has held for *twelve years* and has therefore acquired a right of occupancy, no compensation for improvements is ordinarily required, as we have decided that his holding is to be brought to sale in execution of a decree for rent, and the price realized will include the value of the improvements. The ryot will receive the surplus sale-proceeds after the landlord's claims for rent have been satisfied. This is, however, concerned only with the case of non-payment of rent. In the possible case of eviction for breach of a condition of a lease, provision for giving compensation for improvements to a right-of-occupancy ryot has been made in clause (*e*) of section 20.

We have decided not to make any rules for compensation for improvements made by a ryot who has not held for three years.

It remains to deal with ryots who have held for three or more than three years, but less than twelve years; and the text deals with these.

Ryot who has held for three but less than twelve years, if evicted, entitled to compensation for improvements.

29. A ryot who for a continuous period of three or more but less than twelve years has as a tenant held, or has as a tenant occupied and cultivated land other than *khamar*, *nijjote*, or *sir* land let on lease for a term or year by year, shall, if evicted from such land on any of the grounds mentioned in section 26, or if he relinquishes it under clause (*b*) of section 27, be entitled to receive compensation for any improvements which he may have made on such land at any time while he held or occupied it as aforesaid.

Explanation.—The term "improvements" in this section means works by which the cultivation of land has been lastingly facilitated, or the productive powers of land have been lastingly increased, and includes—

(*a*) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot;

(*b*) the making of tanks, wells, and other works for the storage, supply or distribution of water for agricultural purposes;

(*c*) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water;

(*d*) the reclaiming, clearing or enclosing of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto;

(*f*) the planting of fruit-trees.

Landlord and ryot may agree as to payment of compensation. If they do not agree, Civil Court may decide. Principles of decision.

30. The landlord and the ryot may agree on the amount and mode and time of payment of the compensation mentioned in section 29. If they do not agree, the Civil Court may upon the petition of either of them determine the amount of such compensation, and in so doing shall take into consideration the following principles:—

(*a*) The amount of the ryot's compensation in respect of an improvement shall be the sum laid out by the ryot on the improvement with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made, and while the improvement continues unexhausted.

38 & 39 Vic., Cap 92, s. 7.

38 & 39 Vic., Cap. 92, s. 11.

(*b*) In determining the amount of compensation in respect of an improvement there shall be taken into account in reduction thereof any sum reasonably necessary to put the same into good repair or condition.

id. s 19; and *The Landlord and Tenant (Ireland) Act*, 1870.

(*c*) Any deterioration of the holding caused by the act of the ryot shall be taken into account.

Decree to be made for amount of compensation.

The Civil Court, having determined the amount of compensation, shall make a decree for the same. *Such decree, if the amount of compensation awarded thereby does not exceed fifty rupees, shall be final and conclusive.*

Three years' ryot may claim abatement, and, if landlord refuse, may relinquish land and claim compensation.

31. Any such ryot as is mentioned in section 26 may, on the grounds mentioned in section 25 or any of them, claim abatement of the rent payable by him in money. If the landlord of such ryot is unwilling to allow the abatement to which such ryot would be so entitled, such ryot may relinquish the land in the manner provided in section 27, and, in this event, he shall be entitled to compensation under the provisions of sections 28, 29 and 30. The compensation recoverable under section 28 in any such case shall be a sum equal to the unabated rent of one year.

CHAPTER V.—OF RYOTS WHO HAVE HELD LAND FOR LESS THAN THREE YEARS.

See Article 50 of the Digest.

Ryot, who has held for less than three years, may be evicted at the will of his landlord, but only through the Court.

32. (1) Subject to the other provisions of this Act, no ryot who has as a tenant held, or has as a tenant occupied and cultivated, land for less than three years, whether under a written agreement or not, shall be entitled by reason of such holding or occupying to retain possession of such land against the will of his landlord: but a ryot, who does not quit of his own accord, shall not be evicted otherwise than by the action of the Civil Court.

See Articles 49 and 52 of the Digest.

Such ryot may not sue for determination of future rent or for abatement.

(2) No ryot, who has as a tenant held, or has as a tenant occupied and cultivated, land for less than three years, may maintain a suit against his landlord—

(*a*) for the determination of the rent at which he shall be entitled to continue to hold or occupy and cultivate such land; or

(*b*) for abatement of the rent previously paid by him for such land.

See Article 50 of the Digest.

Any such ryot let into possession otherwise than for a term, or holding over on expiry of term, may not be ejected without notice to quit.

33. (1) When any such ryot as is mentioned in section 32 has been let into possession otherwise than for a term certain, or having been let into possession for a term certain has held over on the expiry of such term with the consent, express or implied, of his landlord, such ryot may not be ejected unless a notice to quit has been served upon him as hereinafter provided.

No

Notice to quit when to be given, and how to be served.

(2) Such notice to quit shall be in writing and shall be served through the Civil Court (*a*) in districts or parts of districts in which the Fusli or Umli year

prevails, in or before the month of Jeyt; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Pous.

34. When a ryot, who in the case mentioned in clause 1 of section 33 has in accordance with the provisions of Clause 2 of the same section been served with a notice to quit land, refuses to give up such land from the first day of the year next ensuing after service of such notice; or

New.

Ryot served with notice to quit as provided in section 33,

when a ryot, who has been let into possession of land, for a term less than three years, refuses to give up such land upon the expiry of such term and has not the consent, express or implied, of his landlord to hol ' over,

or ryot holding after expiry of term of less than three years without landlord's consent,

the landlord may, within three months from the expiry of the year in which such notice was served or from the expiry of such term, sue to eject such ryot; and, in any case in which such a suit has been instituted, no time subsequent to the year in which such notice was served or subsequent to the said term shall be taken into account so as to give to any such ryot any benefit which is by this Act given to ryots, who have held, or occupied and cultivated, land for three years or any longer period;

may be sued and ejected by Court. Period of wrongful holding not to count.

and such landlord, if he obtains a decree for ejectment against such ryot, shall be entitled to recover in execution of such decree the full letting value of the land for such time as he may be kept out of possession after the expiry of such year or such term as aforesaid, together with reasonable compensation for any other damage or loss that may have been caused to him by being so kept out of possession.

Such ryot when ejected liable for full letting value of the land, and also for damages.

35. (1). No ryot who has as a tenant held, or has as a tenant occupied and cultivated, land for less than three years shall be liable to pay a higher rent than that paid by him for the previous year, unless a written agreement has been entered into by him and his landlord for the payment of such higher rent; or unless a notice demanding such higher rent has been served upon him within the time provided in clause 2 of section 33 for the notice therein mentioned. Such notice shall set forth the grounds upon which such higher rent is claimed, but such grounds shall not be limited by any of the provisions of this Act.

New.

See North-Western Province Rent Act XVIII of 1873, s. 21.

Ryot who has held land for less than three years, not liable to pay higher rent, unless there be a written agreement or unless a notice has been served. Notice to state grounds of enhancement.

See Article 51 of the Digest.

(2). When a notice demanding higher rent has been served upon any such ryot as provided in clause 1, such ryot, if he is unwilling to pay such enhanced rent, may relinquish the land before the first day of the year next ensuing after service of such notice. If he does not so relinquish the land, he shall be liable to pay the increased rent demanded by such notice from such first day of the year next ensuing: provided that he shall not in any case be liable under this rule to pay more than double the former rent.

Such ryot served with such notice may relinquish land. If he do not, he is liable to pay increased rent demanded up to limit of double former rent.

Article 51 of the Digest.

Explanation.—When any such ryot is served with a notice to quit or pay a specified increased rent, and he elects to remain in possession of the land mentioned in such notice, the tenancy is not thereby determined, and such notice shall be treated as a notice under clause 1.

CHAPTER VI.—OF THE USE OF LAND FOR BUILDING PURPOSES.

Ryot may not use land for building or other purpose inconsistent with use for which it was let.

36. When land used or let to be used for agriculture, horticulture, pasture, or any other similar purpose is held by any such ryot as is mentioned in section 16 or in section 26, such ryot shall not, without the permission of the landlord of such land, use any portion thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid: provided that a ryot may without such permission erect upon such land a brick-built or other dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto.

Rule does not extend to erection of a suitable residence.

Ryot using land for other purpose may be served with notice of objection.

37. If any such ryot begins to use any such land without the permission of the landlord thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid, such landlord may serve such ryot through the Civil Court with a notice requiring him to desist from such change of the use of the land, and to restore it to its former condition, if such condition has been altered.

If ryot does not obey notice served in reasonable time, and landlord obtains injunction, ryot disobeying injunction may be ejected.

38. In any case in which such notice is served upon such ryot within a reasonable time after he began to change the use of the land, if such ryot fails to comply with the requirements of such notice, and if such landlord having applied to the Civil Court under the provisions of *The Specific Relief Act*, 1877, obtains a mandatory injunction to restrain such ryot from changing the use of the land, and to direct him to restore it to its former condition, where such condition has been altered, then if such ryot for one month after the date of the decree granting such injunction, or, where such decree has been made *ex parte*, after the date of service upon him of notice of such injunction, fails to obey the same, he shall be liable to be ejected by the Court from the land in respect of which the injunction was granted; he shall also be liable to pay by way of damages such sum as the Court which granted the injunction may find to be necessary to restore the land to its former condition, where such condition has been altered; and he shall not be entitled to compensation in respect of any buildings or works erected or executed upon such land.

The draft here supposes the landlord to be on the alert and to keep himself informed of what is going on upon his property. In this case eviction is the penalty, if the ryot pertinaciously continues to do what he has no right to do.

If notice not served within reasonable time, and no evidence that landlord was earlier aware of the change of the use of the land, ryot not liable to ejectment, and entitled to compensation for loss from removing buildings, &c.

39. In any case in which such notice is not served upon such ryot within a reasonable time after he began to change the use of the land, if there is no evidence that the landlord was aware thereof for some considerable time before he took steps to have such notice served, and if the

The draft here supposes the landlord to be negligent in looking after his property, and in consequence not to have given the ryot notice of objection at as early a period as he otherwise might have done had he been diligent.

landlord obtains a mandatory injunction as aforesaid, such ryot may be compelled to obey such injunction in any manner provided in that behalf by *The Code of Civil Procedure*, but he shall not be liable to ejectment, and he shall be entitled to receive from his landlord such compensation as the Court which granted the injunction may find to be a reasonable equivalent for any loss sustained by him in consequence of his having to remove any buildings or works erected by him before he received the notice mentioned in section 37.

Landlord being aware and without objection allowing ryot to spend money;

40. If the landlord, being aware that any such ryot has begun to use any such land for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid, without objection allows such ryot to expend money on such building or other purpose;

or landlord serving no notice of objection for two years,

or, if the landlord fails to serve the ryot with such notice as is mentioned in section 37 within two years after such ryot so begun to change the use of the land;

estopped from afterwards objecting to change of use of the land.

such landlord shall be estopped from afterwards objecting to such changed use, and such land shall be deemed to have been let for building or such other purpose to which its use has been altered.

Possession for twelve years of land let for building or other such purpose gives a right of occupancy.

41. (*a*) When land used or let to be used for building or any purpose other than agriculture, horticulture, pasture, or the like, has been in the immediate possession of a tenant, whether under or without a lease, for the full period of twelve years after the commencement of this Act, such tenant shall, in the absence of any contract to the contrary, acquire a right of occupancy in such land, and shall not be liable to be ejected.

Explanation.—The possession of the father or other person from whom the tenant inherits shall be deemed to be the possession of the tenant, within the meaning of this rule for the purpose of acquiring a right of occupancy.

Such interest to be heritable, transferable, and devisable.

(*b*) The interest of the person who has so acquired a right of occupancy shall be heritable, transferable, and devisable, and shall be liable to sale in execution of any decree of the Civil Court.

In default of payment of rent, land with buildings, &c., may be sold.

(*c*). If such tenant makes default in paying the rent of such land, the land together with the buildings or other works thereupon may be brought to sale in execution of a decree for arrears of such rent and shall be subject to the provisions of section 64: provided that any such tenant may be ejected for a breach of any condition of his tenancy for which breach he is liable to ejectment by virtue of a contract between him and his landlord.

Consider procedure to be followed

Rule for enhancing the rent of land used for building or other such purpose.

42. When a tenant has acquired a right of occupancy in any land under the provisions of section 41, if the rent of such land has not been enhanced during the previous ten years, the landlord thereof shall be entitled from time to time to enhance such rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used

for similar purposes, or so that it may be equal to five per centum per annum of the market value of such land.

CHAPTER VII.—OF MERGER.

Nemo potest esse dominus et tenens.

When same person becomes owner of an estate and a tenure therein, the tenure to be merged in the estate.

43. (*a.*) When by purchase at a private or public sale, by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions :—

Kent, vol. IV, p. 108: Woodfall, 281.

(1.) Such person must be owner of the estate and the tenure in the same right and at the same time.

Kent, vol. IV, p. 112.

(2.) The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

[1] Kent, vol. IV, pp. 110, 111.
[2] 13 B. L. R., 198.

(3.) Such merger shall not operate to the prejudice of any person having a lien[1] upon such tenure or of any under-tenure-holder or ryot.[2]

8 and 9 Vic., cap. 106, s. 9.

(4.) Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of, a decree, such proprietor shall have the same rights and be subject to the same liabilities which the previous holder of such tenure had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed :

Proviso.

provided that when, in the case of two or more persons being coparceners, one or more, but not all, of such persons become the owners of a tenure in such estate, no merger shall take place.

Deed declaratory of intention must be registered within three months and published upon land comprised in tenure.

(*b.*) Upon the expiry of three months from the date when such person so became owner of the estate and the tenure, such contrary intention may be proved in the following manner and not otherwise; that is to say, by the production of a deed declaratory of such intention and duly registered within such period of three months, and by proof that a copy of such deed was published in the manner provided in sub-clauses 4 and 5 of clause (*a*) of section 208 for the notification therein mentioned.

Provisions of section 43 to apply to other cases in which the owner of a superior interest acquires an interest immediately inferior.

44. The provisions of section 43, so far as they are applicable, shall apply, *mutatis mutandis*, to a tenure-holder acquiring an under-tenure of the first degree, to an under-tenure-

holder of the first degree acquiring an under-tenure of the second degree; and so on in order; and also to a proprietor, tenure-holder or under-tenure-holder acquiring an occupancy holding, the rent of which was previously payable directly to such proprietor, tenure-holder or under-tenure-holder.

Proprietary interest merged in paramount title, when an estate is purchased by Secretary of State for India in Council.

New.

45. *It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate is merged in the paramount title of such Secretary of State, and extinguished by the fact of such proprietary interest and such paramount title meeting in the same person. The third and fourth conditions mentioned in clause (a) of section 43 shall apply to every such estate acquired by the Secretary of State for India in Council. Nothing contained in this section shall be construed to interfere with the operation in any such estate of Act VIII of 1879 passed by the Lieutenant-Governor of Bengal in Council, or of any Act for the time being in force for the recovery of public demands.*

Illustration.

An estate named Sultanpur is purchased by the Collector of Burdwan on behalf of the Secretary of State for India in Council at a sale for arrears of land revenue. A, B, and C are ryots holding land included in this estate, and before the sale they paid certain annual sums as rent direct to the proprietor of Sultanpur. After the sale they are liable to pay the same annual sums to the Secretary of State for India in Council, and such sums are so payable not as rent, but as land revenue.

CHAPTER VIII.—OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDER-TENURES, AND OCCUPANCY HOLDINGS.

See Article 25 of the Digest.

46. Every succession to, or transfer of, a tenure or under tenure or any portion thereof, or of an occupancy holding shall within three months after such transfer or succession be registered in the *sarrishta* or Rent-Office of the landlord to whom the rent of such tenure, under-tenure or occupancy holding is payable; and such landlord shall admit to registry and otherwise give effect to every such transfer or succession: provided that no landlord shall be bound to admit to registry or give effect to any division or distribution of the rent of such tenure, under-tenure or occupancy holding, nor shall any such division or distribution be valid against such landlord without his consent in writing.

Tenant to register transfer of his tenure, under-tenure or holding in his landlord's sarrishta. No division of the rent binding on landlord without his consent in writing.

Explanation 1.—The term "transfer" in this section means and includes a transfer by private sale, gift, or exchange, or by sale in execution of a decree.

Explanation 2.—The term "succession" in this section includes devolution by will or by inheritance. In the case of a succession, when there are more heirs than one, all such heirs shall be entitled to have their names registered.

47. In every case of succession to, and transfer of, *a tenure, under-tenure or occupancy holding*, not being a transfer by sale in execution of a

decree for arrears of its own rent, the landlord thereof is entitled to a fee, which shall be paid upon the registration of such transfer or succession. Such fee shall be two per centum upon the annual rent of such tenure, under-tenure or occupancy holding, provided that no such fee shall be *less than one rupee or more than* one hundred rupees. In default of payment of such fee, such landlord may refuse to register such transfer or succession.

Landlord entitled to fee on transfer of a tenure, under-tenure or occupancy holding.

See Article 27 of the Digest. Except in the case of patni taluks, the existing law does not provide for a fee upon a transfer or succession.

48. (*a.*) In every case of transfer of a tenure, under-tenure or occupancy holding, not being a transfer by sale in execution of a decree, the transferrer shall cease to be, and the transferee shall become personally liable for the rent of such tenure, under-tenure, or holding from and after the date of application for registry.

Effect of transfer and of registration of transfer or succession upon liability for rent.

See Note 5, page 12 of the Digest.

(*b.*) In every case of transfer of a tenure, under-tenure or occupancy holding by sale in execution of a decree for arrears of the rent thereof, the transferree shall be personally liable for such rent from and after the date of the confirmation of such sale by the Court. The former tenant shall be personally liable for such rent up to such date.

(*c.*) *In every case of transfer of a tenure or under-tenure by sale in execution of a decree, not being a decree for arrears of the rent thereof, it shall be the duty of the tenant whose interest is so transferred to give notice of such transfer to his landlord. If he gives such notice within a reasonable time, he shall cease to be, and the transferee shall become, personally liable for the rent from the date of the confirmation of the sale. If he omits to give such notice within a reasonable time, he shall remain personally liable for the rent until he gives notice of the transfer*

(*d.*) In every case of succession to a tenure, under-tenure or occupancy holding, the person succeeding shall, *upon taking possession*, be personally liable for such rent from and after the death of the previous tenant.

49. If in any case of transfer of a tenure, under-tenure, or occupancy holding, not being a transfer by sale in execution of a decree, application for registration of such transfer is not made and the proper fee tendered within three months as provided in section 46, the transferrer shall remain liable for the rent, and the landlord shall not be bound to recognize the transfer. Such landlord shall, however, admit such transfer to registry after the expiry of the said period of three months *upon payment of a fee of twenty per centum of the amount of one year's rent, provided that no such fee shall be less than ten rupees or more than one thousand rupees.*

Consequence of non-registration of transfer other than transfer by sale in execution.

50. (*a.*) If in any case of succession to a tenure of under-tenure, or in any case of transfer thereof by sale in execution of a decree application for registration of such succession or transfer is not made *by all or any of the transferrers or successors*, and the proper fee tendered within three months as provided in section 46, the landlord shall be entitled to attach and hold possession of such tenure or under-tenure.

Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a tenure or under-tenure.

See Article 29 of the Digest.

Landlord may collect rents of tenure or under-ure attached, but must account for balance after deducting his own rent, &c.

(*b.*) 'After the attachment of such tenure or under-tenure, and until such succession or transfer is registered, such landlord shall be entitled to collect the rents from the under-tenure-holders or ryots, and after deducting therefrom the cost of the attachments, the expenses of collection, and the rent due to himself, he shall hold the balance in trust for the person entitled by succession or by purchase at such sale.

If collections insufficient, person entitled by succession or purchase liable for the deficiency.

(*c.*) If the rents so collected from the under-tenure-holders or ryots are insufficient to discharge the cost of the attachment, the expenses of collection and the rent due to such landlord, the person so entitled by succession or purchase at the execution sale shall be liable for the deficiency, and such landlord may proceed against him for the recovery of the same, subject, however, to the provisions of section 64.

Landlord may after three months admit tenure or undertenure to registry on payment of fine.

(*d.*) Such landlord shall at any time after the expiry of the said period of three months admit to registry such succession or transfer by execution sale, *upon payment of a fee of twenty per centum of the amount of one year's rent, provided that no such fee shall be less than ten rupees or more than one thousand rupees.*

See section 23 of Mr. Mackenzie's Bill.

Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a holding.

51. If in any case of succession to a holding or in any case of transfer thereof by sale in execution of a decree, such succession or transfer is not registered within three months as provided in section 46, *by all or any of the tranferees or successors*, the landlord shall be entitled to attach and hold possession of such holding, and may cultivate it or let it for cultivation. Such landlord shall at any time after the expiry of the said period of three months admit to registry such succession or transfer by execution sale, *upon payment of a fee of twenty per centum of the amount of one year's rent, provided that no such fee shall be less than ten rupees or more than one thousand rupees.* If the person entitled by succession or by transfer by an execution sale fails to apply for registration and to tender the proper fee before the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, next ensuing after such succession or transfer, such holding shall be at the absolute disposal of such landlord.

See Digest, page 28, note 4, and Article 28. For the period of limitation for such suits, see Third Schedule, Article 18.

If landlord fails or refuses to register, civil suit will lie to compel him. Damages may be awarded where pecuniary loss has resulted.

52. If a landlord fails or refuses to admit to registry and otherwise give effect to a succession to, or transfer of, a tenure, under-tenure or occupancy holding, in the manner provided in section 46, the transferrer in any case of transfer by private sale, gift, or exchange, or in any case the transferee or successor may sue such landlord in the Civil Court, and if no sufficient grounds are shown why such succession or transfer should not be registered, such Civil Court shall make a decree directing the registry thereof, and may further award damages in any case in which pecuniary loss has resulted from such neglect or refusal to admit to registry and otherwise give effect to such succession or transfer.

Reg. VIII of 1819, s. 5. Article 27 of the Digest.

Transferee or devisee of patni tenure to give security to the extent of half the yearly rent.

53. (*a*.) In every case in which a patni tenure is transferred by private sale, gift or exchange, or by sale in execution of a decree, the proprietor shall be entitled to demand from the transferee substantial security to the amount of half the yearly rent payable for such tenure, and such proprietor may refuse to register such transfer until such security has been tendered and accepted.

Reg. VIII of 1819, s. 6. Article 28 of the Digest.

(*b*.) If in any case of a transfer such security be required and be not furnished within three months from the date of such transfer, the proprietor shall be entitled to attach and hold possession of the tenure to the exclusion of the transferee until the said security shall be furnished. The provisions of clauses (*b*) and (*c*) of section 50 shall apply to every such attachment.

Reg VIII of 1819, s. 7. Article 29 of the Digest.

If security be not furnished within one month, proprietor may attach the tenure.

Reg. VIII of 1819, s. 6. Article 28 of the Digest.

(*c*.) If the security tendered by any transferee is rejected by the proprietor, and such transferee is dissatisfied with such rejection, he may make an application to the District Judge for an order directing such proprietor to receive such security and register such transfer. Such District Judge, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting such application. No appeal shall lie from any such order.

Application to District Judge, if security tendered be refused. District Judge may make order. No appeal from such order.

I. L. R. 1, Calc. 383.

54. The Board of Revenue may prescribe for any class of landlords a form in which they shall maintain a register of all successions to, or transfers of tenures, under-tenures and occupancy holdings, the rent of which is payable to such landlords, and, may make, and when made, cancel or alter rules for the maintenance of such register; and may further provide a penalty not exceeding fifty rupees for the breach of any such rule. Every person concerned in any such succession or transfer shall be entitled, upon payment of a fee of four annas, to receive a copy of the entry relating thereto made in such register. Such copy shall be signed by such landlord, or by the person who usually receives the rents on his behalf, and shall be sealed with such landlord's seal, when he commonly uses a seal.

Board of Revenue may prescribe form of register of succession and transfers. Persons concerned entitled to copies of entries on payment of fee of four annas.

Consider, should this copy be made *primâ facie* evidence of the succession or transfer.

Chapter IX.—Of Rent, Instalments of Rent, Receipts for Rent, Deposits of Rents, Apportionment of Rent, and Hypothecation for Rent.

55. (*a*.) Rent payable by a tenure-holder or under-tenure-holder shall be paid upon such dates and in such instalments as are customary or may have been agreed upon between such tenure-holder or under-tenure-holder and his landlord; and, in the absence of any such custom or agreement, upon the dates mentioned in clause (*b*) of this section, and in instalments fixed in the manner provided in the same clause.

Rent of tenure-holder or under-tenure-holder payable in what instalments and upon what dates.

Consider if this will suit Behar.

(*b*) Rent payable by a ryot shall be paid in four quarterly instalments which shall become due upon the first day of Asarh, the first day of Asin, the first day of Pous, and

Rent of ryots payable in what instalments and on what dates.

the first day of Cheit, respectively. When any agreement has been made or any custom has existed before the commencement of this Act regulating the instalments in which such rent is payable,

(*a*) the amount of the instalment payable on the first day of Asarh shall be the total of the instalments payable according to such agreement or custom in the months Beisakh, Jeyt and Asarh:

(*b*) the amount of the instalment payable on the first day of Asin shall be the total of the instalments payable according to such agreement or custom in the months Srabun, Bhadro and Asin:

(*c*) the amount of the instalment payable on the first day of Pous shall be the total of the instalments payable according to such agreement or custom in the months Kartik, Aghun and Pous: and

(*d*) the amount of the instalment payable on the first day of Cheit shall be the total of the instalments payable according to such agreement or custom in the months Magh, Falgoon and Cheit.

In the absence of any such agreement or custom the portion of the whole rent which shall be paid for each quarterly instalment aforesaid shall be fixed by the Collector after such inquiry as he may deem necessary, and with reference to what he may find to be the most usual practice in the district. Notice of the portion of rent so made payable upon the first day of Asarh, the first day of Asin, the first day of Pous, and the first day of Cheit, respectively, shall be given—

by posting a copy of the Collector's order fixing such instalments at every police station in the district, and in each of the courts or offices of the following officials; that is to say, the District Judge, the Collector, the Magistrate, and all Munsifs, officers in charge of Sub-divisions and Sub-Registrars of Assurances in the district: and

by proclaiming such order by beat of drum at the head-quarters of the district and of every sub-division therein, and in any other places which the Lieutenant-Governor of Bengal may direct.

See Article 101 of the Digest.

What to be deemed an arrear of rent. Interest on arrears.

56. Every instalment of rent not paid or discharged *before sunset* of the day or date upon which it is payable according to the provisions of section 55, shall be deemed to be an arrear of rent, and shall bear interest from such day or date *up to the date of any decree that may be passed therefor* at the rate of twelve per centum per annum; and such interest shall be decreed in every case in which any such arrear is recovered in any Civil Court, *unless the tenant can show that he was prevented by causes beyond his control from paying or discharging such instalment upon the day or date upon which it was payable.*

Receipts for Rent.

See Article 61 of the Digest and section 34 of Mr Mackenzie's Bill.

Tenant making payment to his landlord entitled to a receipt. What particulars to be inserted in such receipt. Landlord to keep counterpart.

57. (*a.*) Every tenant who makes a payment to his landlord of rent, *or of any money recoverable as rent,* is entitled to obtain thereupon and without delay a written receipt for the amount paid by him. Such receipt shall specify the date of payment;

the amount paid, or where rent is paid in kind, the quantity of produce delivered; the tenure, under-tenure, holding, or land in respect of which such rent or money is paid, or produce delivered; and the instalment and year on account of which such payment is admitted to have been made. The landlord shall retain a counterpart of such receipt, and similar particulars shall be inserted in such counterpart.

Tenant entitled to statement of account at close of the year. Landlord to keep counterpart.

(*b.*) Every tenant shall be entitled to receive from his landlord upon the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, a statement of account showing the tenure, under-tenure, holding, or land for which such tenant pays rent to such landlord; the annual rent payable therefor; the amount of rent in arrear at the beginning of such year; the payments made during the year; the portion of each payment credited to the rent of such year and the portion credited to the arrears of previous years; and the amount, if any, remaining unpaid at the close of such year. The landlord shall retain a counterpart of such statement, and similar particulars shall be inserted in such counterpart.

Landlords to provide themselves with book-forms of such receipts and account statements, and the counterparts thereof.

(*c.*) Every landlord shall provide himself with forms of such receipts and statements of account, with the counterparts thereof attached. Such forms shall be bound together in books containing each not less than twenty-five such receipts or statements, which shall be numbered consecutively. Each receipt or statement and the counterpart thereof shall bear the same consecutive number.

Penalty for omitting or refusing to furnish receipt or account statement in form prescribed.

(*d.*) Every landlord, who after six months from the commencement of this Act omits or refuses to give to any tenant on demand a receipt or statement of account containing the above particulars shall be liable to the penalty provided by section 88.

Deposit of Rent in the Collectorate.

Tenant may in what cases deposit in the Collectorate his rent which has become due.

58. (1.) Subject to the conditions specified in section 59, a tenant may in any of the cases hereinafter mentioned deposit the rent payable by him in the Collectorate Treasury of the District, or, where there is a Sub-division, in the Treasury of the Sub-division, within which District or Sub-division the tenure, under-tenure, holding, or land for and in respect of which such rent is payable, or any portion thereof is situate; that is to say—

See Article 99 of the Digest

(*a*) when such rent was duly tendered by such tenant or his agent at the *mal kachari* or other place where such rent was payable, and such rent so tendered was not accepted;

(*b*) when such rent is payable to coparceners jointly and such tenant was unable to obtain the joint receipt of such coparceners therefor, and no manager has been appointed by them or by the District Judge:

(*c*) when such tenant entertains a *bonâ fide* doubt as to who is entitled to receive such rent.

(2) *Subject to the conditions and in the cases aforesaid, such rent may also be deposited with any public officer specially empowered by the Lieutenant-Governor of Bengal to receive such deposits of the rents of tenures, under-tenures, holdings, and land situate within a specified area. When a public officer has been so specially empowered, no deposit of the rent of any tenure, under-tenure, holding or land situate within such area shall be received at any Collectorate or Sub-divisional Treasury.*

Public officer may be specially empowered to receive deposits of rent.

59. Such deposit of rent shall be subject to the following conditions, that is to say—

Conditions on which rent may be deposited.

(*a*) Such rent shall be deposited, in any case in which a tender has been made, within ten clear days from the *first date on which after such tender the Collectorate or Sub-divisional Treasury or public office as it may be is open, and in any other case within fifteen clear days from the first date on which after such rent fell due such treasury or public office is open.* When the Collectorate or Sub-divisional treasury or *public office* is closed on the tenth day, the deposit may be made on the day on which such treasury or public office re-opens.

(*b*) Such deposit shall be made by presenting a written application and with such application a written declaration in, or as nearly as possible in, the form A in the second Schedule annexed to this Act. Such declaration shall be made by the tenant, or, if he is not personally cognizant of the facts forming the subject-matter thereof, then by a person so personally cognizant.

(*c*) The rent deposited shall be the full amount of rent due by such tenant to such landlord in respect of the tenure, under-tenure, holding or land mentioned in section 58, *and when a tender has been made, of the interest, if any, due at the time of such tender.*

60. The officer in charge of the Collectorate Treasury or Treasury of the Sub-division *or such public officer as aforesaid* shall receive any deposit of rent made under any of the circumstances specified in section 58 and in compliance with the conditions mentioned in section 59, and shall give a receipt for the same under his official seal. Such receipt shall be and operate as a full acquittance for the rent payable by such tenant and deposited as aforesaid, in the same manner and to the same extent as if such *money had been received.*

Receipt to be granted under his seal by Treasury or public officer for rent so deposited and to be a valid acquittance.

(*a*) in case (*a*) of section 58, by the person to whom such rent was tendered;

(*b*) in case (*b*) of section 58 by the coparceners jointly; or

(*c*) in case (*c*) of section 58, by the claimants jointly or by the claimant entitled to the receipt of such rent.

Provision for service of notice is made in a general section applicable to service of all notices—*See* section 159.

Notice of the deposit to be given to the persons entitled, or claiming to be entitled, to the rent:

61. (*a.*) The officer in charge of the Collectorate Treasury or the Treasury of the Sub-division *or such public officer as aforesaid* shall *forthwith have posted in a conspicuous place in his office a notification of such deposit, addressed,* according to the purport of the application made by the depositor and the declaration therewith presented, to the person entitled to receive such rent or to the coparceners or claimants aforesaid. *If no application for payment is made under clause (b) within fifteen days after the posting of such notification, such officer shall within fifteen days after the expiry of the said fifteen days, cause a notice of such deposit to be served upon such person, or coparceners or claimants as aforesaid.*

and rent deposited may upon their application be paid to such persons on their receipt or joint receipt, or receipt of duly appointed agent.

(*b.*) Such rent so deposited may, upon an application being made to this effect *and after deducting the cost of serving any notice served under clause* (*a*), be paid (1) to such person entitled to the same, or (2) to such coparceners upon their joint receipt, or, if a common manager be appointed on their behalf by themselves or by the District Judge, to such common manager, or (3) to such claimants upon their joint receipt, or to any of them who has obtained a decree declaring or establishing his title. Any person to whom payment may be made in accordance with these provisions may receive such payment through a duly authorized agent.

Refund to depositor or payment at joint request of him and landlord.

(*c*) If no payment be made under clause (*b*) for a period of three years from the date of such deposit, the amount deposited may be repaid to the depositor upon his application and on his giving back the receipt mentioned in section 60. Such amount may at any time within such period of three years be paid, on the return of such receipt and upon the joint application of the depositor and of the person or persons entitled to payment under clause (*b*) in any manner requested in such application.

Apportionment of Rent.

Apportionment of rent in what cases.

62. When two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions of such area have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively.

Apportionment how to be made.

63. Such apportionment may be made by mutual agreement between such persons and the tenant by whom such rent is payable. If such persons and such tenant cannot agree amongst themselves as to the manner in which such apportionment shall be made, the Civil Court may, upon the application of any such persons, or of such tenant, proceed to make such apportionment, and may to this end direct a measurement of the whole or any portion of such land.

Hypothecation for Rent.

64. Every tenure, under-tenure, and occupancy

holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought such tenure, under-tenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.

Every tenure, under-tenure, and holding to be deemed hypothecated for its own rent which shall be a first charge thereupon.

CHAPTER X.—OF COPARCENERS.

65. (1.) When coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued or is likely to ensue

See Article 16 of the Digest.

District Judge may direct coparceners, who disagree, to be served with notice to show cause why they should not appoint a common manager

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or under-tenure, direct a notice to be served upon all such coparceners, calling upon them to show cause why they should not appoint a common manager.

(2.) If such coparceners fail to show such cause within *one month* after service of such notice, or if they show cause which in the opinion of the District Judge is not sufficient, such District Judge may make an order directing such coparceners to appoint a common manager. A copy of such order shall be served upon any coparcener who did not appear before it was made.

If no cause, or cause not sufficient, is shown, District Judge may make an order directing the appointment of a manager.

66. (1.) If such coparceners do not within *one month* after the making of such order, or, where such order has been so served within *one month* after such service, appoint a common manager and report such appointment for the information of the District Judge, such District Judge may—

If such order be not obeyed, District Judge may appoint manager.

Removal of manager so appointed.

(*a*) *direct that such estate, tenure, or under-tenure be managed by the Court of Wards in any case in which such Court of Wards assents to undertake the management thereof: or,*

(*b*) *in any case, appoint a manager, in which event such coparceners shall be bound by such appointment.*

(2.) *The Lieutenant-Governor of Bengal may appoint a person for any district to manage all estates, tenures, and under-tenures to which the provisions of this section apply, and when any such appointment has been made, such person shall be appointed manager under sub-clause* (*b*) *of clause* (*1*) *by the District Judge.*

(3.) *In any case in which the Court of Wards undertakes the management of an estate, tenure or under-tenure under sub-clause* (*a*) *of clause* (*1*), *so much of the provisions of The Court of Wards Act,*

"The Court of Wards Act, 1879", to apply to management by Court of Wards.

1879, as relate to the management of immovable property shall apply to such management.

Salary of manager. Manager to give security. Powers of manager. Duty to keep accounts. Removal.

67. In any case in which a manager is appointed under sub-clause (*b*) of clause (1) of section 66, the District Judge *may settle and from time to time alter the remuneration of such manager, which may be a fixed salary or a percentage of the monies collected by him as manager.* Such manager shall give such security for the proper discharge of his duties as to the District Judge shall appear reasonable and sufficient. For the purposes of management he shall have and be entitled to exercise the same powers which the coparceners jointly might but for his appointment have exercised. He shall keep regular accounts, and shall allow the coparceners or any of them to inspect and take copies of such accounts. He shall be removable by the order of the District Judge and not otherwise, and may be removed upon the application of the Collector, or any person interested in the estate, tenure, or under-tenure.

Management may be restored to coparceners, if prepared to conduct it properly.

68. The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that such management will be conducted by them jointly without inconvenience to the public or injury to private rights.

See Article 60 of the Digest.

Rent to be paid to coparceners on their joint receipt or on that of a manager. One coparcener may not sue for his share of rent separately.

69. Except in the cases hereinafter excepted, rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or, where a manager has been appointed by them or by the District Judge, upon the receipt of such manager; and all such coparceners must be made parties to any suit brought for the recovery of arrears of any such rent. Any such suit brought by one or more coparceners and not by all, or to which all have not been made parties[a] shall be dismissed with costs.

[a] The practice in India is to make *pro formâ* defendants those persons who have co-existent rights with the plaintiff to sue, but who refuse to join as plaintiffs, the fact of this refusal being stated in the plaint. As to the practice in courts of equity in England, which has not been materially altered by the Rules under the Judicature Act, see *Daniell's Chancery Practice*, Vol I, pp. 172, 186; see sections 26 and 30 of *The Code of Civil Procedure*, and consider "with the permission of the Court" in the latter section.

Exception 1—where tenant has contracted to pay a share of the rent separately.

Exception 1.—When an agreement has been made between a tenant and one or more of several coparceners with the consent of the other or others of them that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share of rent shall be so payable and recoverable.

Exception 2—where tenant has been in the habit of paying a share of the rent separately.

Exception 2.—When a tenant has usually paid to one or more of several coparceners, without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent shall be so payable and recoverable.

Exception 3—where coparcener cannot get his share of rent in consequence of collusion.

Exception 3.—When a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants.

70. A coparcener may not, otherwise than conjointly with his other coparceners or through a manager appointed by all the coparceners or by the District Judge, bring a tenure to summary sale under the provisions of Chapter XVI, or measure lands in the possession or occupation of the tenants of such coparceners, or enhance the rents of such tenants, or, where a suit is necessary to effect such measurement or enhancement, maintain such suit without making such other coparceners parties thereto.

One coparcener may not bring tenure to summary sale, or measure the lands, or enhance the rents of the tenants.

CHAPTER XI.—OF SOME MISCELLANEOUS RIGHTS OF LANDLORDS AND TENANTS.

71. Proprietors are competent to grant leases, for any period even to perpetuity, and in any form and at any rent most convenient to the contracting parties and most conducive to their respective interests, of land which was not at the time of the Permanent Settlement held by tenure-holders, under-tenure-holders or ryots, or which being so held has since that time come into the *khas* or actual possession of such proprietors, subject, however, to the other provisions of this Act and to the following conditions, and not otherwise:—

Proprietors competent to grant leases for any Period in any form and at any rent.

(1) All engagements contracted with tenants shall be specific as to the conditions thereof and as to the amount of rent reserved.

Conditions.

(2) All impositions upon the tenants under the denomination of *abwab mahtut* and other appellations *in addition to* the actual rent *shall be deemed illegal and shall subject the person imposing them to the penalty provided by section 87*; and all stipulations and reservations for the payment of such shall be null and void.

(3) No person contracting with a proprietor or employed by him in the management of the collections shall take charge of the lands or collections without written authority signed by such proprietor.

A proprietor may make a grant of land free of rent, but such grant shall be binding only upon the grantor or his heirs or any person claiming through him or them.

72. A landlord may not—

(*a*) under any pretence whatever, impose on his tenants any new cess or other payment not taken into account in fixing the Government revenue, or not sanctioned by law or by ancient custom approved by the revenue authorities;

Landlord may not impose abwabs on his tenants;

(*b*) or compel the attendance of his tenants for the adjustment of their rents or for any other purpose; or adopt any means of compulsion for enforcing payment of rent other than the means provided by this Act.

or compel the attendance of his tenants, or enforce payment of rent otherwise than according to law.

73. A landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, under-tenure, holding or land in respect of which the relation of landlord and tenant exists between them, so long as such relation exists. This duty extends only to interruption or disturbance by the landlord or any one claiming under or paramount to him. It does not extend to interruption or disturbance by third parties.

Landlord bound to put and maintain tenant in possession.

In the case of a new letting the landlord is bound, upon the tenant's request, to put him in possession of the property demised.

74. A person having an interest in land, is not competent to grant a valid lease of such land for a term exceeding his own interest.

Lease may not be granted for term exceeding lessor's interest.

When a lease has been granted for a term exceeding the lessor's interest, such lease is valid to the extent of such interest and is voidable only as to the excess: provided that, if such lessor after granting such lease acquire such excess such lease shall be valid for such excess between such lessor and such lessee and persons claiming under them or either of them respectively.

Lease for term exceeding lessor's interest valid to the extent of such interest and voidable as to excess merely.

If a person grants a lease of land in which he has no interest to a lessee who obtains possession of such land under such lease, and if such person afterwards acquires an interest in such land, such lease shall be valid to the extent of such after-acquired interest between such lessor and such lessee and persons claiming under them or either of them respectively.

Lease granted by person having no interest valid to extent of interest subsequently acquired.

75. Subject to the provisions of section 70 and if not restrained from so doing by express engagement with the occupants of the land, a landlord is entitled to make a general survey and measurement of all land comprised in any estate, tenure, under-tenure or holding, of the rents of which he is in receipt, and is further entitled to enter upon such land for the purpose of making such survey and measurement.

Landlord entitled to make general survey and measurement, unless restrained by contract.

Illustrations.

(*a*)—A, a proprietor, grants a portion of his estate in patni, to B, the patni rent payable to A being fixed at Rs. 500. The ryots, as a necessary consequence, pay their rents to B. Both A and B are entitled to make a general survey and measurement of the lands comprised in the patni lease.

(*b*)—A is the proprietor of an estate. B holds lakheraj land situated within the local limits of A's estate. A is not entitled to measure B's lakheraj land.

76. (*a*.) In any case in which a measurement of land is made by order of a Civil Court or of a Collector in any suit between landlord and tenant, such measurement shall be made according to the Government measure of 14,400 square feet to one standard bigha. If the rights of the parties to such suit are regulated by any different local measure depending upon a standard pole of the pergunnah in which the land is situate, the

Measurement in suits between landlords and tenants to be made according to Government standard of measurement.

Conversion into local measure, when necessary.

Government measure shall be converted into such local measure for the purposes of such suit.

Determination of the length of the standard pole in case of dispute.

(*b.*) If any dispute as to the length of such standard pole arises in any suit under this Act, the Collector shall in any suit before himself, or in any suit before a Civil Court on a reference made for this purpose by such Civil Court, determine the proper length thereof. An appeal shall lie from the Collector's decision to the District Judge. If no such appeal be preferred, the decision of the Collector shall be final and conclusive.

Tenant may not permanently alter condition of the land. Proviso as to improvements.

77. (*a.*) A tenant is bound to use the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A royt may not without the consent of his landlord materially alter the condition of the land held by him, so as to render it *permanently* unfit for agricultural or horticultural purposes: provided that any ryot may without such consent make any of the improvements mentioned in section 29.

Ryot entitled to cut trees planted by himself or his predecessor in title.

(*b.*) A ryot is entitled, *any custom to the contrary notwithstanding,* to cut down and appropriate trees on his holding planted by himself or by any ryot from whom such holding was derived by public or private sale, gift, devise, or inheritance.

Tenant not liable to transferree of landlord's interest for rent paid to former landlord without notice of the transfer.

78. No tenant shall, in any case in which his landlord's interest has been transferred, be liable to the transferree for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless such transferree has given notice of the transfer to such tenant.

Relation of landlord and tenant in what cases determined by what occurrences.

79. Subject to the other provisions of this Act, a tenancy is determined as between the parties thereto by any of the following occurrences in the following cases respectively, that is to say—

(1) in the case of a lease for a term—by the expiry of such term, unless the tenant holds over without objection made by the landlord, or unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

By expiry of term—exception.

(2) in the case of a lease by a landlord whose interest is for a limited time only and who has no power to create a tenancy extending beyond the period of such interest—by the expiry of the term of such interest and the determination of such landlord's possession, unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

By determination of landlord's limited interest.

Exception.

(3) in the case of a ryot holding otherwise than under a lease for a definite term—by relinquishing the whole of the land held or cultivated by him, as one

holding: provided he has given notice of his intention in writing to the person entitled to the rent of such land or to his authorized agent—in districts or parts of districts where the Fusli or Umli year prevails, in or before the month of Jeyt—and in districts or parts of districts where the Bengali year prevails, in or before the month of Poos—of the year preceding that in which the relinquishment is to have effect.

By relinquishment of land by ryot after notice given.

If such ryot has not given such notice and the land is not let to any other person, he shall continue liable for the rent of such land.

If the person entitled to such rent, or his agent, refuses to receive such notice, and to sign a receipt for the same, such ryot may make an application to the Court within the jurisdiction of which the lands or any portion of them are situate, and such Court shall thereupon cause the notice to be served on such person or his agent:

(4) in the case of a non-transferable holding—by abandonment, when the tenant, having ceased to cultivate the land or pay rent therefor, has been absent from the neighbourhood for a year, and the landlord elects to treat the tenancy as determined:

By abandonment.

(5) in the case of a non-transferable holding for which an arrear of rent is due at the end of the Bengali year or at the end of the month of Jeyt of the Fusli or Umli or Willayutti year—by ejectment from the land in respect of which such arrear is due.

By ejectment of ryot for non-payment of rent.

No ryot shall be ejected otherwise than in execution of a decree or order of the Civil Court. The right to eject for non-payment of the rent of any one year shall be deemed to have been waived by the receipt of rent for a subsequent year:

(6) in the case of a farmer or other lease-holder not having a permanent or transferable interest in the land, when an arrear of rent is due and unpaid—by cancelment of the lease and ejectment of the lease-holder.

By ejectment of farmer or lease-holder for non-payment of rent.

No such lease shall be cancelled and no such lease-holder shall be ejected otherwise than in execution of a decree or order of the Civil Court:

(7) in the case of a ryot not having a right of occupancy and not being such a ryot as is mentioned in section 26, or of a tenant for a term holding over after the expiry of his term with the express or implied consent of his landlord—by a notice to quit as provided in section 33.

By notice to quit in certain cases.

Explanation—The institution of a suit for ejectment is not equivalent to a notice to quit.

(8) in the case of any tenant—by disclaimer when in a suit to which his landlord is a party the tenant disclaims such landlord's title and sets up an adverse title in himself or another by matter in writing or reduced to writing by the Court under the provisions of this Act or of *The Code of Civil Procedure*, and such landlord elects within six months to treat such disclaimer as a forfeiture of the tenancy:

By disclaimer when a tenant disclaims his landlord's title and sets up an adverse title.

provided that no such forfeiture by disclaimer shall be allowed in any case in which such tenant having been let into possession by such landlord can show that such landlord's title had expired or been defeated or annulled at the time at which such disclaimer was made: or, not having been let into possession by such landlord, can show that he admitted his title as landlord under a *bond fide* misapprehension or mistake.

Illustration.

B. having taken from A, a proprietor, an *ijarah* of an estate from the 1st Boisakh 1271 to the last day of Cheit 1288 B. S., lets twenty bighas of land, situate, in such estate, to C, a ryot in 1272 and puts C in possession. The term of the *ijarah* being about to expire. A in Cheit 1288 gives notice to C not to pay to B any of the rent for 1289. B sues C for the first instalment of the rent of 1289, and C in this suit denies B's title as landlord. B having subsequently obtained from A a ten years' extension of the *ijarha* seeks to eject C for so denying his title. C having shown the above facts, is not liable to be ejected.

(9) when the landlord's estate, tenure or under-tenure is sold for arrears of revenue or rent under any law for the time being in force which entitles the purchaser of such estate, tenure, or under-tenure to avoid a lease or determine a tenancy, and such purchaser elects to avoid such lease or determine such tenancy.

By sale for arrears of revenue or rent when purchaser elects to determine.

Explanation.—When the relation of landlord and tenant exists between two persons in respect of any property, the non-payment of rent for such property by such tenant to such landlord shall not of itself determine such relation.

More non-payment of rent does not determine relation of landlord and tenant.

80. When a ryot is ejected in execution of a decree from land upon which there are, at the time of such ejectment, growing crops or other ungathered products of the earth, which such ryot, but for such ejectment, would have been entitled to reap or gather, such ryot shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering, and removing the same; and in the event of his so doing he shall be liable to pay a reasonable rent for the time during which he uses the land as aforesaid:

See Section 32.

Ryot ejected from land entitled to the away-going crops, and to enter on land to remove them.

provided that the landlord may purchase such crops or products at a fair valuation if, when he applies for execution of his decree, he gives notice of his intention to do so. In any case in which the landlord and the ryot cannot agree as to such valuation, the Court may, upon the application of either of them, determine the value of such crops or products, and the order so determining such value shall have the force of a decree.

Landlord may, if he wishes, purchase such crops or products at a valuation to be made by Court in case of dispute.

CHAPTER XII.—OF SPECIAL PROVISION FOR BEHAR.

81. Every ryot, who on the day of is in occupation of land other than *zerat* land, and has occupied the same continuously for the three years next preceding such date, has a right of occupancy in such land which he has so occupied for three years continuously, if, during each of the twelve years next preceding such aforesaid date, he has occupied any land other than *zerat* land in the estate which such first-mentioned land is included, or in any estate, which with such estate at any previous time formed a single estate.

Ryot has right of occupancy in land held for three years, if he held any land in same estate for twelve years previously.

Explanation—"*Zerat*" land is land, the cultivation of which has been carried on for twelve years continuously, wholly on behalf of the proprietor and at his sole risk, with his own stock, or by his servants or by hired labourers, or partly by some and partly by others of these persons.

82. When the whole or any portion of the land in which a ryot has a right of occupancy is given by him with his consent to his landlord in exchange for other land, forming a portion of the same estate, tenure, or under-tenure, such ryot shall have a right of occupancy in the land received by him in exchange therefor.

Ryot to have right of occupancy in land received in exchange from his landlord for land in which he had a right of occupancy.

83. When rent is payable by delivering to the landlord a certain proportion of the actual gross produce, such proportion shall in no case exceed one-half, and in any case in which there is no written agreement specifying a different proportion, shall be presumed to be one-half.

Rent payable in kind not to exceed half the gross produce, and in the absence of any express stipulation to be half the gross produce.

84. (*a.*) When rent is payable by delivering a certain proportion of the actual gross produce of the land, or by paying the equivalent money value thereof determined by an estimate or appraisement of the standing crop, or by some similar proceeding, and in order to settle the quantity of produce to be delivered, or determine the equivalent money-value to be paid, it is necessary that both parties—that is to say, the landlord and the tenant—should be present together upon the land either in person or by agent, then, if such parties cannot amicably arrange to be present together upon the land for such purpose as aforesaid, or if any dispute arises between such parties as to the settlement of the

When rent is payable in kind or in money value of a portion of the crop, landlord or tenant may, in case of dispute, petition Collector to depute an officer to make an award.

quantity of produce to be delivered or as to determining the equivalent money-value to be paid, in any such case either of such parties may make an application to the Collector of the district that a proper officer may be deputed to settle the quantity of produce or determine the equivalent money-value aforesaid, and to make an award accordingly.

Collector to depute an officer, whose award shall be binding, unless set aside by the Civil Court.

(*b*.) The Collector shall, upon any such application being made to him, depute a proper officer for such purpose. Such officer shall give to both parties reasonable notice of the time and place at which he intends to proceed to make his award, and shall at such time and place proceed to make such award accordingly, and may direct the costs thereof to be paid by the party whom he finds to be in the wrong. If either party, having received notice, fails to attend, he shall nevertheless be bound by the award made in his absence. The award when made may be acted upon at once. Either party, if dissatisfied, may institute a suit in the Civil Court to set aside such award. If no such suit is instituted, such award shall be final.

Danabandi or appraisement papers to be deposited in the Collector's office within fifteen days after the appraisement.

85. When the rent payable for land is the equivalent money-value of a fixed proportion of the actual gross produce thereof, and such equivalent money-value is determined by an estimate or appraisement *(danabandi)* of the standing crop or by some similar proceeding, the *danabandi* or appraisement papers shall, within fifteen days after the making of the appraisement, be lodged in the office of the Collector of the district.

Ryot or landlord entitled to have rent, payable in kind or in equivalent value of share of gross produce, commuted to an annual money-rent. Principle upon which such commutation should be made. Procedure for making.

86. Every ryot having a right of occupancy or the landlord of such ryot shall be entitled to have rent payable in the manner mentioned in section 84 commuted into an annual money-rent payable without direct reference to the crops produced at each harvest, but liable to enhancement under the provisions of this Act.[a] Such annual money-rent shall be fixed according to the prevailing money-rent payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, or, if no such prevailing rate obtains in the vicinity, then according to the average value of the landlord's share of the actual gross produce for the preceding five years, a reasonable deduction being made therefrom in consideration of the whole risk of cultivation being taken by the ryot.

In effecting this commutation we get a corn rent—a rent reserved in produce,—and it would be easy to arrange for future enhancement of the commuted money-rent by declaring that after ten years such money-rent may be enhanced to the average price during these ten years of the same amount of produce.

The provisions of Chapter XV as to proceedings before the Collector shall, so far as they are relevant, be applicable to the settlement of annual money-rents under this section.

Chapter XIII.—Of Damages and Penalties.

Damages for exaction by landlord from tenant of sum in excess of the rent payable.

87. Every tenant, from whom any sum of money or any portion of the produce of his land is illegally exacted by his landlord in excess of the rent lawfully payable by such tenant, shall be entitled to recover from such landlord such sum so exacted together with damages not exceeding double such sum.

See section 57, clause (*d*).

Damages recoverable for withholding receipts for rent.

88. Every tenant, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so paid.

Damages for extorting payment of rent by duress.

89. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, such tenant shall be entitled to recover such damages as may be deemed a reasonable compenstaion for the injury done him by such extortion. An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

The Court may award damages not exceeding 25 per cent. on rent not paid without reasonable or probable cause.

90. If in any suit brought for the recovery of arrears of rent, it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, and that he has not, on or before the date upon which such rent was payable according to the provisions of section 55, tendered such amount to the plaintiff or his duly authorized agent, or in case of the refusal of the plaintiff or such agent to receive the amount so tendered, has not before the institution of the suit deposited such amount in the Collectorate as provided in section 58, it shall be lawful for the Court to award to such plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed as such Court may think fit. Such damages, when awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of six per centum per annum from the date of decree until payment on realisation thereof.

Explanation.—The Court may not give, in addition to damages, interest before decree upon the rent decreed.

The Court may award compensation not exceeding 25 per cent. on amount claimed to defendant improperly sued for rent.

91. If in any suit brought for the recovery of arrears of rent it shall appear to the Court that the plaintiff has instituted such suit against the defendant without reasonable or probable cause, or that the defendant had duly deposited in the Collectorate, in accordance with the provisions of section 58, the full amount which the Court shall find to have been due to the plaintiff on the date of such deposit, it shall be lawful for such Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as such Court may think fit; and such sum, with interest at the rate of twelve per centum per annum until payment or realization thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

CHAPTER XIV.—OF LIMITATION.

See Articles 76, 77, 78 and 79 of the Digest; and section 4 of *The Indian Limitation Act*, XV of 1877.

Suits and applications in Third Schedule to be instituted and made within the time there prescribed: otherwise to be dismissed.

92. Subject to the provisions of section 93 the suits, appeals, and applications specified in the Third Schedule annexed to this Act shall be instituted and made within the time prescribed in such schedule for

each of them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed shall be dismissed, although limitation has not been pleaded.

93. The following portions of the Indian Limitation Act, 1877, shall apply to the suits, appeals and applications mentioned in section 92; that is to say, of Part II, the Explanation to section 4 and section 5; and the whole of Part III.

Portions of the Indian Limitation Act applicable to such suits and applications.

See Digest, page 56, foot-note 6, and 4 Cal. L. R. 371.

94. When the result of litigation between any persons is such that they stand in the relation of landlord and tenant to each other and have stood in this relation while such litigation was pending, but, until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation.

Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent.

See Explanation to Article 78 of the Digest and the cases noted opposite thereto.

PART II.

THE PROCEDURE IN SUITS BETWEEN LANDLORDS AND TENANTS.

CHAPTER XV.—OF PROCEEDINGS TO ENHANCE THE RENT PAYABLE IN MONEY BY RYOTS HAVING A RIGHT OF OCCUPANCY, OR BY TENURE-HOLDERS OR UNDER-TENURE-HOLDERS.

95. (*a*.) A landlord who has a permanent transferable interest in land held by a ryot having a right of occupancy therein may, at his option and as in this Chapter hereafter provided, proceed in the Civil Court or before the Collector to enhance the rent of such ryot upon any one or more of the first three of the grounds specified in section 22, and may proceed before the Collector only to enhance such rent upon the fourth of such grounds.

Landlord having permanent transferable interest, to proceed before what tribunal for enhancement of rent.

(*b*.) A landlord, who has a farming or lease-hold interest in hand held by a ryot having a right of occupancy therein may proceed in the Civil Court, as in this Chapter hereafter provided, to enhance the rent of such ryot upon any one or more of the first three of the grounds specified in section 22; and, if a period of not less than ten years of such interest remains unexpired, but not otherwise, he may proceed before the Collector to enhance such rent upon the third and fourth of such grounds or either of them.

Landlord having a farming or lease-hold interest, to proceed before what tribunal for enhancement of rent.

I.—*Proceedings in the Civil Courts.*

96. A landlord intending to proceed in the Civil Court to enhance the rent of a ryot having a right of occupancy upon any one or more of the first, second or third grounds specified in section 22, shall present a plaint to such Court or such officer as it appoints in this behalf. Such plaint shall, in order to affect the rent of the following year, be pre-

Enhancement proceedings in the Civil Court to be commenced by plaint. Such plaint when to be filed if intended to affect the rent of the following year.

This procedure does away with the notice of enhancement and all the difficulties and technicalities connected therewith.

sented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughan.

Plaint to set forth the grounds of enhancement.

97. Such plaint shall set forth the ground or grounds specified in section 22, upon which enhancement is claimed in respect of each holding mentioned therein.

Particulars to be given when enhancement is claimed on the *first* ground.

(1.) When enhancement is claimed on the first of such grounds, the plaint shall further state—

(*a*) the quantity of land held by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the rate of rent actually paid for such land or each class of such land; and

(*c*) the alleged prevailing rate which the plaintiff claims instead of the rate actually paid.

Particulars to be given when enhancement is claimed on the *second* ground.

(2.) When enhancement is claimed on the second of such grounds, the plaint shall further state—

(*a*) the quantity of land for which rent was previously paid by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent paid for such land and the rate or rates at which such rent was calculated for each class;

(*c*) the quantity of land in excess of that specified under (*a*) for which the plaintiff claims to receive additional rent;

(*d*) the amount of additional rent claimed for the land specified under (*c*); and

(*e*) the total rent claimed, that is to say, the total of (*b*) and (*d*).

Particulars to be given when enhancement is claimed on the *third* ground.

(3.) When enhancement is claimed on the third of such grounds, the plaint shall further state—

(*a*) the quantity of land held by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent previously paid for such land, and the rate or rates at which such rent was calculated;

(*c*) the cause and extent of the alleged increase in the productive powers of the land; and

(*d*) the enhanced rent or rates of rent which the plaintiff claims to receive in consequence of such increase.

The provisions of the Code of Civil Procedure to apply to suits for enhancement brought in the Civil Courts.

98. (*a.*) The Civil Court to which any such plaint has been presented shall proceed to deal therewith in accordance with the provisions of *The Code of Civil Procedure*, and all the proceedings of such Court in the suit, so instituted by the presentation of such plaint, shall be governed by the provisions of the said Code.

Civil Court to decide all questions fairly raised between the parties.

(*b.*) Such Court shall have full power to decide upon the landlord's right to enhance and upon the fairness of the enhanced rent demanded, and may declare to the landlord entitled to such enhanced rent or to any less rent which may be found to be fair and equitable, and shall decide all questions

directly raised between the parties so as to avoid as far as may be possible, a multiplicity of suits. In any case in which the Court decrees enhancement of rent, such enhancement shall take effect from the commencement of the Fusli or Umli or Bengali year following that in which the plaint was presented to the Court.

Illustrations.

(*a*) *A* sues to enhance the rent of *B*, a ryot having a righ of occupancy, on the first of the grounds specified in section 22, alleging that *B* holds 20 bighas of land at one rupee per bigha and pays a rent of Rs. 20; that the prevailing rate, payable by the class of ryots to which *B* belongs for land of a similar description and with similar advantages in the vicinity, is one rupee and eight annas per bigha; and therefore that *B's* rent shouldbe enhanced to Rs. 30. *B* pleads that he holds 15 bighas only, and denies that such prevailing rate is more than the one rupee per bigha which he pays. *A* fails to prove that the prevailing rate is one rupee and eight annas. The Court shall nevertheless decide whether *B* holds 15 or 20 bighas, and whether his rent is Rs. 15 or Rs. 20.

(*b*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the second of the grounds specified in section 22, alleging that *B* previously held ten bighas of land at one rupee and eight annas per bigha, that eight more bighas have been recently added by alluvion to *B's* holding; and that *B* should pay a rent of Rs. 27 instead of Rs. 15 which he previously paid. *B* denies that any land has been added to his holding by alluvion, and alleges that he previously held not ten, but fifteen bighas, and that the rate of rent was one rupee, not one rupee and eight annas. There is no satisfactory evidence of allavion. The Court shall nevertheless try whether *B* previously held ten or fifteen bighas, and whether the rate of rent was one rupee or one rupee and eight annas.

(*c*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the ground that the productive powers of the land held by *B* have increased otherwise than by the agency or at the expense of *B* in consequence of the construction by Government of a canal which has drained and improved *B's* land. *B* denies that the productive powers of his land have increased, and alleges that his land is not liable to enhancement as it is held at a rate which has not been changed since the time of the Permanent Settlement. *A* fails to prove the alleged increase of the productive powers of the land. The Court shall nevertheless try whether *B's* land is held at a rate of rent which has not been changed since the time of the Permanent Settlement, and so is protected from enhancement.

II.—*Proceedings before the Collector.*

Application may be made to Collector for enhancement or settlement of rents.

99. A landlord, who intends to proceed befor the Collector to enhance the rent of ryots having a righe of occupancy on any one ot more of the four groundr specified in section 22, or who in the case mens tioned in section 112 desires to ascertain the par-- ticulars therein mentioned, shall make an application for this purpose to the Collector of the district, in which are situate the lands, or any portion of the lands, to the rent of which he is entitled.

Jurisdiction where lands situate in two or more districts.

When the lands are situate in two or more districts included in the division of the same Commissioner, such Commissioner, and when the lands are situate in two or more districts not included in the division of the same Commissioner, the Board of Revenue may, for any reason which appears sufficient, direct that such application be transferred to any other Collector within whose Collectorate any portion of such lands is situate; and such latter Collector shall in any such case have power to proceed as if such application had in the first instance been made to himself.

A landlord who has made an application under

this section is in this Chapter hereafter termed *The Applicant*. The provisions of section 168 as to the signature and verification of a plaint shall be applicable to every such application.

Applicant may ask for—
(1) a table of rates; or
(2) an enhanced jamabandi; or
(3) a settlement jamabandi.

100. The Applicant may in his application pray that the Collector shall prepare for the estate, tenure or under-tenure, in respect of which the application is made (1) a *table of rates*, or (2) an *enhanced jammabandi*, or (3) a *settlement jamabandi*.

Meaning of a "Table of Rates".

A "Table of Rates" means a table or schedule which exhibits the classes of land in an estate, tenure or under-tenure, according to the classification usual in the locality, and the rates of rent payable for each class. When enhancement is claimed on the first or second of the grounds specified in section 22, such table shall exhibit the prevailing rates payable immediately before its preparation. When enhancement is claimed on the third or fourth of the said grounds, such table shall exhibit such prevailing rates, and shall further exhibit the enhanced rates allowed by the Collector upon such grounds respectively.

Meaning of a "Jamabandi".

A "Jamabandi" means a table or schedule which exhibits the names of the ryots in an estate, tenure or under-tenure; the quantity of land or, when such land consists of different classes, the quantity of each class held by each ryot; the rate of rent previously payable for each class of land; the total rent payable by each ryot for the total land of each class held by such ryot, and the grand total of rent payable by each ryot.

Meaning of an "Enhanced Jamabandi".

An "Enhanced Jamabandi" is a jamabandi which further exhibits—

(*a*) when enhancement is allowed on the first of the grounds specified in section 22—the prevailing rate of rent allowed for any class of lands instead of the rate previously payable; the new total rent payable, in consequence, for all the land of such class held by each ryot; and the new grand total of rent payable by each ryot:

(*b*) when enhancement is allowed on the second of such grounds—the additional land of each class proved to be in the possession of each ryot; the new total rent payable, in consequence, for all the land of such class held by each ryot; and the new grand total of rent payable by each ryot:

(*c*) when enhancement is allowed on the third or fourth of such grounds—the enhanced rate of rent allowed for each class of land; the new total rent payable, in consequence, for all the land of such class held by each ryot; and the new grand total of rent payable by each ryot.

Meaning of a "Settlement Jamabandi".

A "Settlement Jamabandi" is a jamabandi prepared by the Collector upon the application of a landlord, who is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable by each of such ryots.

A.—*Proceedings to obtain a Table of Rates.*

Applicant for table of rates to present with his application a copy of the table according to which he claims to collect rents from occupancy ryots.

101. (*a.*) When *The Applicant* prays that the Collector shall prepare a table of rates for the estate, tenure, or under-tenure in respect of which the application is made, he shall with his application present a copy of the table of rates which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from ryots having a right of occupancy. He shall further distinctly specify in such application the grounds upon which he claims to enhance such rents; and, in the case of the third and fourth grounds specified in section 22, the period at which such grounds came into operation.

Notice to be given to ryots to assent or object within one month.

(*b.*) The Collector shall thereupon give notice to all such ryots in the estate, tenure, or under-tenure, in respect of which the application is made, and shall by such notice call upon them to appear within one month and agree to the rates specified in such copy or state their objections, if any, to such rates.

If ryots do not assent to such rates, or if they or any of them object thereto, Collector to proceed to prepare a table of rates—to give reasons for allowing or disallowing any rate claimed by The Applicant.

102. (*a.*) If within one month after the publication or service of such notice all the ryots, whose rents *The Applicant* seeks to enhance, assent to the rates so specified, the Collector shall prepare a table of rates accordingly, and the provisions of section 105 shall be applicable thereto. If all such ryots do not assent to the rates so specified, or if they or any of them appear and object to such rates, the Collector shall proceed to prepare a table of rates for the estate, tenure, or under-tenure, in respect of which the application has been made. Upon the conclusion of his proceedings he shall draw up a statement thereof, and shall therein set forth the grounds upon which he allows or disallows the rates claimed by *The Applicants*, or any of them; or allows any lower rates in substitution thereof.

Table of rates to be published with notice to *Applicant* and ryots that they may object.

(*b.*) The table of rates so prepared shall be published together with a notice intimating to *The Applicant* and the ryots that any objections, which he or they may desire to make to such table of rates or to any portion thereof, must be made by a written petition to be presented to the Collector within one month after such publication.

Collector may upon such objections alter or amend the table of rates.

103. If any such objections are presented, the Collector may proceed to consider the same, and may alter or amend the table of rates prepared by him. Upon the expiry of the said period of one month, or upon so amending or altering the table of rates, the Collector shall submit such table of rates together with his proceedings and any petitions of objection that may have been presented by *The Applicant* or by the ryots, to the Commissioner of the Division or through the Commissioner of the Division to the Board of Revenue for revision. The Lieutenant-Governor may, from

Collector to submit table of rates together with his proceedings and petitions of objection to superior revenue authorities for revision.

time to time by an order, which shall be published in the *Calcutta Gazette*, direct what cases shall be finally revised by the Board of Revenue or by a Commissioner, regard being had to the total amount of rents involved or to the area of the lands or the number of ryots affected.

Lieutenant-Governor to regulate powers of revision of Board and Commissioner.

104. The Board of Revenue or the Commissioner shall have full power to revise, amend, or alter in any manner which appears proper, the table of rates and the proceedings submitted under the provisions of section 103, and to allow or reject in whole or in part any objection forwarded therewith, and may before passing final orders direct and await further proceedings or enquiries in any case in which it may appear expedient to take this course. The Board or Commissioner when exercising these powers of revision may hear, but shall not be bound to hear, any person affected by the proceedings or any pleader or advocate appearing on behalf of such person.

Board or Commissioner to have full power to revise, amend, or alter table of rates, and may direct further enquiry and may hear any party interested.

105. (*a*.) Such table of rates as may be finally sanctioned by the Board or the Commissioner shall be conclusive between *The Applicant* and the ryots aforesaid in all such proceedings, either in the Civil Court or before the Collector, as are mentioned in section 106, and shall have effect in respect of the lands with which the proceedings are concerned for a period of ten years from the commencement of the year next following that in which the notice mentioned in clause (*b*) of section 102 was published, and thereafter, until altered by fresh proceedings under this Act: and the rates specified in such table shall, subject to the other provisions of this Act, be deemed to be the fair and equitable rates payable for such lands by ryots who have a right of occupancy, but who are not entitled by custom or contract or special equitable considerations to hold at more favourable rates.

Table of rates to be binding for ten years subject to variation for alluvion or diluvion.

(*b*.) Such table of rates or a certified copy thereof shall be conclusive evidence in every Civil Court that the proceedings of the Board, of the Commissioner, and of the Collector have been duly conducted in accordance with the provisions of this Act.

Certified copy of table of rates conclusive as to provisions of Act having been followed.

106. (*a*.) *The Applicant* may enforce such table of rates against such ryots by suit in the Civil Court and any number of ryots not exceeding ten may be made co-defendants in any such suit; or such applicant may, at any time after three months and within one year from the date of the table of rates being finally sanctioned, apply to the Collector for the preparation of an enhanced jamabandi; and the Collector shall upon such application proceed to prepare such enhanced jamabandi, and may for this purpose exercise all the powers which he is by this Act empowered to exercise for that purpose. If such Collector is satisfied that *The Applicant* was unable to put the table of rates in force in consequence of the recusant or unreasonable conduct of the ryots

Applicant may enforce table of rates by suits in Civil Court:

or may apply for an enhanced jamabandi after three months.

Cost of preparing such an enhanced jamabandi when ryots recusant.

he may direct that the whole of the costs of preparing such enhanced jamabandi shall be paid by such ryots.

Burden of proof not to be altered in consequence of preparation of table of rates.

(*b.*) In any such proceedings in the Civil Court or before the Collector the burden of proof in respect of all matters other than the rates of rent for the classes of land specified in the table of rates shall lie upon *The Applicant* in the same manner as if he had in the first instance proceeded by suit in the Civil Court to enhance the rents of such ryots aforesaid.

B.—Proceedings to obtain an Enhanced Jamabandi.

Applicant for enhanced jamabandi to present with his application a copy of the enhanced jamabandi, according to which he claims to collect rents from occupancy ryots.

107. (*a.*) When *The Applicant* prays that the Collector shall prepare an enhanced jamabandi for the estate, tenure or undertenure, in respect of which the application is made, he shall with his application present a copy of the enhanced jamabandi, which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from ryots having a right of occupancy. He shall further distinctly specify the ground or grounds upon which he claims to enhance the rent of each ryot specified therein; and, in the case of the third and fourth grounds specified in section 22, the period at which such grounds came into operation. The entry of any ryot's name in such copy of the enhanced jamabandi shall be deemed to be an admission that he has a right of occupancy in the land shown opposite his name.

Notice to ryots to assent or object within one month.

(*b.*) The Collector shall thereupon give notice to all the ryots mentioned in such copy of the enhanced jamabandi, and shall by such notice call upon them to appear within one month and individually assent to the entries respecting them individually in such copy of the enhanced jamabandi, or state their objections, if any, to such entries.

If all the ryots appear and assent to the enhanced jamabandi, Collector to make an order that it shall be binding upon both parties for ten years.

108. (*a.*) If within one month after the publication or service of such notice all such ryots appear and assent to the enhanced rates of rent claimed or to the entries concerning them individually in such copy of the enhanced jamabandi, the Collector shall make an order declaring such enhanced jamabandi binding upon *The Applicant* and the said ryots for the period of ten years from the date of such order; and, subject to the provisions of this Act as to enhancement for land gained by alluvion and abatement for land lost by diluvion, such enhanced jamabandi shall be conclusively binding upon such *Applicant* and such ryots for the said period of ten years, and thereafter, until altered by agreement or by fresh proceedings under this Act.

If ryots do not all appear and assent, or if they or any of them object to the rates or the entries concerning them, Collector to proceed to prepare an enhanced jamabandi. Any ryot may at any time assent to entries concerning himself.

(*b.*) If within the said period of one month all such ryots do not appear and assent as aforesaid, or if they or any of them appear and object to the enhanced rates of rent claimed or to the entries concerning them in such copy of the enhanced jamabandi, the Collector shall proceed to pre-

pare an enhanced jamabandi for the estate, tenure or under-tenure, in respect of which the application has been made. Any ryot may at any stage of the proceedings assent by a written petition to the rates and the particulars in the copy of the enhanced jamabandi, so far as they concern himself, and such rates and particulars shall thereupon become binding as between him and *The Applicant*.

Collector to draw up statement of proceedings and set forth grounds for allowing or disallowing rates or entries in copy of enhanced jamabandi.

109. (*a.*) Upon the conclusion of his proceedings, the Collector shall draw up a statement thereof, and shall therein set forth the grounds upon which he allows or disallows or alters the rates and entries in the copy of the enhanced jamabandi or any of them. He shall then, in accordance with his determination of these matters, prepare an enhanced jamabandi.

Enhanced jamabandi to be published with notice to *Applicant* and ryots that objections may be made within one month.

(*b.*) The enhanced jamabandi so prepared shall be published together with a notice intimating to *The Applicant* and the ryots that any objections which he or they may desire to make to the rates or entries in such enhanced jamabandi must be made by a written petition to be presented to the Collector within one month after such publication.

Collector to deal with objections—may take further evidence before passing orders.

110. (*a.*) If any objection is made by The *Applicant* or by the ryots or any them to the rates or entries in such enhanced jamabandi, the Collector shall deal therewith; and, in order to satisfy himself of the correctness of such objection or otherwise, he may take such further proceedings as to him appear necessary, and may therein exercise the same powers as he was competent to exercise in the original proceedings, and he may make any order which he deems proper, either cancelling, amending, or otherwise altering any such rate or any such entry, or rejecting such objection.

Appeal from Collector's order.

(*b.*) Any landlord or ryot affected by such order may, if dissatisfied therewith, prefer an appeal to the Commissioner of the Division within thirty clear days; and such Commissioner may upon such appeal, after or without further enquiry, make such order as to him appears proper.

Enhanced jamabandi binding for ten years if no objection made, or as soon as objection made has been disposed of. Clause (b) of section 105 applicable thereto.

111. (*a.*) If no objection is made to such enhanced jamabandi within the said period of one month, or, if any such objection has been made, then as soon as it has been disposed of as provided in section 110, such enhanced jamabandi shall become conclusively binding between *The Applicant* and all the ryots mentioned therein, whether they or any of them have or have not appeared during the proceedings; and subject to the provisions of this Act as to enhancement for land framed by alluvion and abatement for land lost by diluvion, shall remain so conclusively binding for a period of ten years after the expiry of the said month, and thereafter until altered by agreement or by fresh proceedings under this Act. The provisions of clause (*b*) of section 105 shall further be applicable to such enhanced jamabandi.

(*b.*) No ryot who is compelled to pay rent to *The Applicant* according to such enhanced jamabandi shall be liable in a suit for mesne profits to any third party claiming to be entitled to such rent, but any such suit shall be maintainable against such *Applicant* solely.

Ryot compelled to pay rent to *Applicant* not liable to third party.

C.—Proceedings to obtain a Settlement Jamabandi.

112. (*a.*) When *The Applicant* prays that the Collector shall prepare a settlement jamabandi for the estate, tenure, or under-tenure, in respect of which the application is made, he shall in his application set forth the circumstances under which he is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable by each of such ryots. The Collector, if satisfied that *The Applicant* is unable to ascertain accurately the particulars aforesaid, and that, in consequence, proceedings for the preparation of a table of rates or an enhanced jamabandi would be ineffectual, shall proceed to prepare a settlement jamabandi and shall thereupon give notice to the ryots in such estate, tenure or under-tenure.

Applicant for Settlement jamabandi to state in his application the circumstances under which he is unable to ascertain the rents payable to him.

(*b.*) Such notice shall call upon them to appear within one month and state the plots of land held by each of them, together with the class, quantity, and boundaries thereof, the rent previously paid for such land, and the rent which they are each of them willing to pay. Each ryot shall further state whether he claims to have a right of occupancy in the land held by him.

Notice to ryots to state particulars.

113. If within one month after the publication or service of such notice all the ryots appear and state the several particulars by such notice required of them, and if *The Applicant* assents to such particulars so stated, the Collector shall prepare a settlement jamabandi accordingly. The provisions of clause (*a*) of section 108 shall apply to such settlement jamabandi. If such ryots do not appear and state such particulars, or if such particulars having been stated by all or any of them are objected to by such *Applicant* on grounds which to the Collector appear *primâ facie* sufficient, such Collector shall proceed to ascertain and determine who are the ryots liable to pay rent to such *Applicant*, what are the lands for which such rents are payable, what rights such ryots have in such lands, and what are the rents or rates of rent, either in excess of the former rents or rates or otherwise, which *The Applicant* is entitled to receive from such ryots for such lands.

If ryots give particulars required of them, and *Applicant* assent thereto, Collector to prepare settlement jamabandi accordingly. If particulars not given, or if given and challenged, Collector shall proceed to determine what rents are payable, by what ryots, for what lands.

114. Upon the conclusion of his proceedings the Collector shall draw up a statement thereof, and shall therein set forth his determination of the several matters mentioned in section 113 and the grounds of such determination. He shall then in accordance with his determi-

Collector to draw up statement of proceedings setting forth his determination and the grounds thereof.

nation of these matters, prepare a settlement jamabandi. The provisions of clause (*b*) of section 109, and of sections 110 and 111 shall be applicable to such *settlement jamabandi*.

General Provisions.

Any number of landlords may join in an application, but Collector may direct separate proceedings.

115. It shall be lawful for any number of landlords to join in an application under section 99, subject, however, to the provisions of the said section as to jurisdiction; and such landlords so joining may specify the proportions in which they are willing to pay the costs of the Collector's proceedings; but the Collector may, if he see fit, direct that separate proceedings be held in respect of any estate, tenure, under-tenure, or specific area belonging to any *Applicants* in which event such *Applicant* shall pay the costs of such separate proceedings.

Collector may endeavour to bring about amicable compromise. Such compromise to be binding.

116. In any case under section 101, section 107 or Section 112, the Collector may, if he see fit, before proceeding to determine or settle the matters specified, endeavour to bring about an amicable compromise of the matters in dispute between *The Applicant* and the ryots; and, if any such compromise is brought about, the Collector shall draw up a formal record of its terms, and such record shall be binding upon all persons mentioned therein.

Applicant to deposit expenses of proceedings when required. Consequence of failing to do so.

117. (*a*.) *The Applicant* shall from time to time, when so required by a written notice signed by the Collector, deposit such sum of money as the Collector may estimate to be necessary in order to carry on the proceedings. If *The Applicant* fails to deposit such sum within fifteen days after such notice has been served upon him, the Collector may order the proceedings to abate; or he may in his discretion receive the said sum after the said fifteen days have expired.

Failure to deposit by some of several *Applicants* who (1) have joined under section 115, or (2) are coparceners.

(*b*.) When there are two or more *Applicants* who have joined under the provisions of section 115, any one of them may deposit such sum as the Collector estimates to be necessary to carry on the proceedings in respect of his own estate, tenure or under-tenure, and the Collector may carry on such proceedings, and may make an order that the proceedings do abate in respect of any estate, tenure or under-tenure belonging to any *Applicant* who has failed to deposit his share of the sum required by the Collector's notice. If such *Applicants* are coparceners, any one or more of them may, within seven days after the expiry of the said fifteen days, deposit any sum which any other of them has failed to deposit, and shall be entitled to recover any sum so deposited by a suit in the Civil Court.

One of two or more *Applicants* may deposit sum required and recover from defaulter.

No fresh proceedings for ten years after order of abatement or after withdrawal of *Applicant* without permission.

118. In any case in which the Collector makes an order under section 117 that the proceedings do abate, and in any case in which *The Applicant* withdraws from the proceedings without the permission of the Collector, no fresh enhancement proceedings may be instituted before

the Collector or in the Civil Court in respect of the lands with which such first-mentioned proceedings were concerned, until a period of ten years has elapsed from the date of such order of abatement, or from the date on which such proceedings terminated in consequence of such withdrawal: provided that nothing contained in this section shall be construed to prevent enhancement for land gained by alluvion or abatement for land lost by diluvion during such period of ten years.

Notice mentioned in sections 101, 102, 107, 109 and 112 how to be published.

119. (*a.*) Any such notice as is mentioned in clause (*b*) of section 101, clause (*b*) of section 102, clause (*b*) of section 107, clause (*b*) of section 109, or clause (*b*) of section 112, shall ordinarily be published by affixing a copy thereof, and, in any case in which a copy of a table of rates or of an enhanced jamabandi or of a settlement jamabandi has been filed or is directed to be published, a copy of the same at the *mál kachahri* of each village to which the lands, in respect of which the application has been made, belong, or at some conspicuous place in such village or upon such lands, and also by proclaiming with beat of drum in such village or upon such lands that such notice has been so affixed: provided that it shall be necessary to publish in each village so much only of such table of rates or enhanced jamabandi or settlement jamabandi as relates to the lands of such village.

Individual notice may be added to, or substituted for, general notice.

(*b.*) When proceedings are taken against one ryot or a few ryots merely, or in any other case in which it appears proper, the Collector may in his discretion direct that an individual notice, containing the particulars concerning him, shall be served upon each ryot either in addition to or in substitution for the general notice in this section provided.

Collector in his proceedings to be guided by such rules as Board of Revenue may lay down.

120. In conducting such proceedings as may be necessary in order to prepare a table of rates, an enhanced jamadandi, or a settlement jamabandi, the Collector shall govern himself by such rules as may be made by the Board of Revenue for his guidance. The Board of Revenue, subject to the sanction of the Lieutenant-Governor of Bengal, may from time to time make, and when made, alter, add to, and revoke such rules not inconsistent with the provisions of this Act, as to such Board may appear necessary in order to give effect to these provisions. Such rules and all additions thereto, alterations and revocations thereof, shall be published in three successive issues of the *Calcutta Gazette*.

Power of Board to make, revoke, and alter rules with sanction of Government.

Collector may exercise powers of a Civil Court for summoning and examining witnesses, &c., and causing production of documents.

121. (*a.*) The Collector may in his discretion at any stage of his proceedings exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining, witnesses, whether parties to the proceedings or not, and in respect of causing the production of documents, and giving or apportioning costs; and the provisions of *The Code of Civil Procedure* applicable to these matters shall apply to a Collector exercising such powers.

(*b.*) He may also in his discretion at any stage of his proceedings, with the consent of the persons interested, refer any matter to arbitration; and the provisions of sections 506 to 522, both inclusive, of *The Code of Civil Procedure* shall apply, so far as is consistent with the provisions of this Act, to the proceedings in arbitration.

Reference to arbitration. Provisions of Code of Civil Procedure to apply.

122. (*a.*) The Collector of every district shall prepare annual lists of the prices, at harvest time, of the staple crops mentioned in clause (*c*) of section 23, such price-lists shall be prepared in accordance with such general directions as may from time to time be prescribed by the Board of Revenue, and shall, when prepared, be submitted to the said Board for approval or revision.

Collector to prepare annual price-lists of staple crops under general directions of Board of Revenue—to submit such price lists to Board for approval or revision.

(*b.*) Such price-lists for all districts and areas mentioned in the said clause (*c*) of section 23 shall, when approved or revised by the Board of Revenue, be published annually in the *Calcutta Gazette* under the signature of one of the Secretaries to the said Board. Any such price-list so published shall be relevant in any proceedings under this Chapter, and shall be *primâ facie* evidence of the price of such staple crops during the year and in the district or area for which it has been published as aforesaid.

Price-lists, when approved or revised by Board, to be published in *Calcutta Gazette* and to be *primâ facie* evidence of prices of staple crops.

123. (*a.*) The Collector may in his discretion at any stage of the proceedings make a measurement of all or any of the lands with which such proceedings are concerned, and may make an order directing the ryots and other persons concerned to be present at such measurement. Such order shall be published in the manner provided in section 119 for the publication of the notice therein mentioned.

Collector may make measurement, and may direct ryots to attend. Publication of notice.

(*b.*) Any ryot who, after the publication of such order, fails to attend and point out his land, shall be estopped from contesting the correctness of the measurement made, or any of the proceedings held, in his absence. If, after due inquiry the Collector shall be unable to make a measurement or ascertain the names of the ryots or other persons holding the lands, he may declare such lands to be at the absolute disposal of the landlord. If any ryot or other person appears within fifteen days after the Collector has recorded such a declaration and shows reasonable cause for his previous non-appearance, such Collector may, upon such terms and conditions as to him appear proper, alter or rescind his previous declaration. *If such ryot or other person does not show such reasonable cause, such Collector shall make an order refusing to alter or rescind such declaration. The provisions of clause (b) of section 110 shall be applicable to such order.*

Consequence of non-attendance.

124. The Lieutenant-Governor may invest any person with the powers of a Collector for the purposes of this Chapter; and may give such directions as appear convenient for dividing between such person and the Collector of the District the work arising under this Act. Any De

Special Collector may be appointed for the purposes of this Act. Deputy Collector may act under supervision of Collector or special Collector.

puty Collector may, subject to the control and supervision of the Collector of the District or of any person so invested with the powers of a Collector, exercise all or any of the powers vested in a Collector by sections 101, 102, 103, 107, 108, 109, 110, 112, 113, 114, 115, 117, 119, 120, 121, 123, 126, 127 and 128. Such control and supervision may be exercised by such Collector or person aforesaid either of his own motion or upon petition by any person alleging himself to be aggrieved.

Appointment of ministerial officers, &c.

125. The Collector may, subject to any rules made in that behalf by the Board of Revenue, appoint such ministerial and other officers as may be required to make such enquiries, and to do all such things as may be necessary to carry out the provisions of this Chapter. The salaries of such officers and the term of their employment shall be subject to the sanction of the Commissioner.

On termination of proceedings, Collector to draw up account of total cost—Refund of balance—Recovery of deficiency.

126. As soon as the proceedings have become final upon the table of rates being finally sanctioned under section 104, or upon the disposal of the objections or appeals instituted under sections 110 and 114, the Collector shall draw up an account of the total cost of such proceedings. If such total is less than the sum total of the amounts deposited under section 117, the balance shall be refunded to *The Applicants* proportionally to the amount of their deposits. If such sum total exceeds the sum total of the amounts deposited, the deficiency shall be paid by *The Applicants* in the same proportion within fifteen days after service of a notice as provided in section 117, and in default of such payment, may be realised as a demand under the provisions of any law for the time being in force for the recovery of public demands. Now Act VII (B.C.) of 1868.

What items may be included in the cost of the proceedings. New.

127. The following items may be included in the account of the cost of the proceedings prepared under section 126:—

(*a*) the whole or a part of the salary and allowances of the Collector or Deputy Collector by whom the proceedings have been conducted. In settling the amount of this item regard shall be had to the portion of the Collector's or Deputy Collector's time occupied by the proceedings;

(*b*) the salaries of the ministerial officers appointed under section 125, or where such officers have been employed in several proceedings, a part of such salaries proportionate to the portion of their time occupied by the proceedings of which the account of the cost is being prepared;

(*c*) all contingent and other expenses actually incurred in the proceedings:

Proviso.

provided that the Collector or Commissioner may in his discretion, when deciding any objection made, or appeal preferred, under section 110 or section 114, direct that the immediate costs thereof shall be paid by the person making such objection or preferring such appeal, or by any party to the proceedings who opposes the same.

When *Applicant* succeeds, ryots to be liable for costs. Costs not to exceed one year's enhanced rent.

128. (*a.*) In any case in which an enhanced jamabandi has been prepared, and *The Applicant* is found entitled to enhanced rent as the result of the proceedings, the Collector may award to him costs payable by the ryots: provided that no ryot shall be liable to pay as costs a sum greater than one year's rent of his holding as settled by the enhancement proceedings. The Collector may in his discretion direct that the costs so payable by any ryot shall be paid by instalments extending over a period not longer than three years. Every such instalment shall bear interest at the rate of six per centum per annum from the date of the Collector's award until the date of realization.

Costs may be made payable by instalments.

(*b.*) Costs payable by a ryot under this section if not paid within fifteen days after the date of the award, or, where costs have been made payable by instalments, any instalment thereof not paid upon the due date, shall be recoverable in the same manner as arrears of rent.

Unpaid costs to be recoverable as arrears of rent.

129. Every person affected by the proceedings shall be entitled to a certified copy of the Collector's statement and of any table of rates, enhanced jamabandi, or settlement jamabandi prepared by the Collector under the provisions of this Chapter. Such copy shall be furnished to such person at his expense. A ryot shall be entitled to receive a certified copy of so much of any jamabandi as concerns himself upon payment of a fee of four annas.

Ryots entitled to copies.

130. When any considerable number of cases has been instituted in a Civil Court by one or more landlords against ryots holding land in the same locality, and it appears to such Civil Court to be desirable that all such cases should be disposed of by the Collector in accordance with the provisions contained in this Chapter such Civil Court may make a recommendation in these terms to the District Judge to which such Court is subordinate: and such District Judge may, if he see fit, transfer such cases to such Collector, who shall thereupon proceed to deal with them in all respects as if an application had been made to him under the provisions of section 99. In any case in which the Collector proceeds thereupon to make a table of rates, or an enhanced jamabundi, or a settlement jamabundi, he shall before so proceeding define the area to which such table of rates, or enhanced jamabundi, or settlement jamabundi shall be applicable.

District Judge may, on report of Civil Court, transfer to Collector any considerable number of cases instituted from same locality.

131. If the Collector of a district is of opinion that, in consequence of a serious dispute likely to lead to a breach of the peace having arisen upon the subject of rent in a considerable area of his district, it is expedient that proceedings should be taken to settle the rents payable by the ryots to their landlords within such area, he may record his reasons for entertaining this opinion, and may forward them, through the Commissioner, for the consideration of the Lieutenant-Governor.

Power of Collector to proceed *suo motu* for the settlement of rent, when dispute exists.

The Lieutenant-Governor, if satisfied of the expediency of taking such proceedings, may authorise such Collector to proceed of his own motion to settle such rents; and such Collector shall thereupon proceed to such settlement, and may to this end exercise the same powers as if an application had been made to him under section 99.

III.—Proceedings to enhance the ent payable in money by tenure-holders and under-tenure-holders.

132. In the following cases, that is to say—

Landlord desiring to enhance rent of tenure or under-tenure to proceed in Civil Court.

(*a*) in the case of a proprietor claiming to enhance the rent of a tenure-holder whose interest is immediately subordinate to that of such proprietor;

(*b*) in the case of a tenure-holder claiming to enhance the rent of an under-tenure-holder whose interest is immediately subordinate to that of such tenure-holder;

(*c*) in the case of a superior under-tenure-holder claiming to enhance the rent of an under-tenure-holder whose interest is immediately subordinate to that of such superior under-tenure-holder;

(*d*) in the case of a landlord claiming under the provisions of section 18 to enhance the rent of a ryot entitled to hold land at fixed rates;

(*e*) in the case of a landlord claiming under the provisions of section 42 to enhance the rent of such land as is specified in section 41;

such proprietor or tenure-holder or superior under-tenure-holder or landlord shall present a plaint to the Civil Court or such officer as it appoints in this behalf. Such plaint shall in order to affect the rent of the following year be presented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughrun. The provisions of section 98 shall be applicable to every such plaint so presented to a Civil Court.

Plaint when to be presented in order to affect rent of following year.

CHAPTER XVI.—OF THE RECOVERY OF ARREARS OF RENT IN CERTAIN CASES BY SUMMARY SALE WITHOUT DECREE.

133. Subject to the provisions of section 70, and to the other provisions of this Chapter, proprietors of revenue-paying estates are entitled to apply in the manner hereinafter provided in sections 134 and 135 for periodical sales of *patni* tenures and other tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of such tenures. The exercise of this power is not confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but applies equally to tenures held under engagements stipulating merely for a sale at the end of the year.

Proprietors entitled to apply for summary sale of certain tenures.

Reg. VIII of 1819, Preamble, and s. 8, cl. 1. Article 135 of the Digest.

Reg. VIII of 1819, s. 8., cl. 2. Article 136 of the Digest.

First sale may be applied for on 1st Baisakh.

134. (*a.*) On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, any such proprietor may present a petition to the Collector[a] containing a specification of any balances that may be due to him on account of the expired year from all or any holders of tenures of the nature described in section 133.

[a] Act XXIII of 1850, which dispensed with the petition to the Civil Court.

Specification of balances due to be stuck up at Collector's kachahri, with notice of sale in default of payment.

(*b.*) Such specification of the balances due shall then be stuck up in some conspicuous part of the Collector's kachahri, with a notice that, if the amounts claimed be not paid before the first of Jeyt following, the tenures of the defaulters will on that day be sold by public sale in liquidation. If the first of Jeyt fall on a Sunday or holiday, the next subsequent day not a holiday shall be selected instead.

Similar notice to be stuck up at proprietor's sadr kachahri and a further notice to be published on the land.

(*c.*) A similar notice shall be stuck up at the sadr kachahri of the *proprietor* himself, and a copy or extract of such part of the notice as applies to the individual case shall be by him sent to be similarly published at the kachahri at which the business of the tenure is transacted, or at the principal town or village upon the land of the tenure of the defaulter. The *proprietor* shall be exclusively answerable for the observance of the forms above prescribed.

Reg. VIII of 1819, s. 8, cl. 2. Article 137 of the Digest.

Service and attestation of service of notice directed to be published on the land.

(*d.*) The copy or extract of such part of the notice as applies to the individual case shall be served by a single peon, who shall bring back the receipt of the defaulter or of his manager for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If the people of the village object or refuse to sign their names in attestation the peon shall go to the kachahri of the nearest Munsif, or if there is no Munsif, to the nearest thana, and there make voluntary oath of the same having been duly published, a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Explanation.—Service upon the defaulter personally of the copy or extract of such part of the notice as applies to the individual case is not a sufficient substitute for publication at the kachahri or at the principal town or village upon the land of the tenure.

(*e.*) If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous[a] to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

[a] I. L. R. 1 Calc. 176.

Reg. VIII of 1819, s. 8, cl. 3. Article 138 of the Digest.

Second or mid-year sale may be applied for on 1st Kartik.

135. On the first day of Kartik[b] in the middle of the year the *proprietor* shall be at liberty to present a similar petition to the Collector with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Asin, and to cause

[b] Note that this will be a month after the rent is due according to section 56.

Sale to take place if arrear to date equal one-fourth or more of the annual rent.

similar publication to be made of a sale of the tenures of defaulters to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor according to the kistbandi, calculated from the commencement of the year to the last day of Kartik.

Reg. VIII of 1819, s. 14, cl. 1. Article 139 of the Digest.

136. (*a.*) If the balance claimed by the *proprietor* on account of the tenant of the tenure remains unpaid *at sunset of the day next preceding* the day fixed for the sale of such tenure *under section* 134 *or section* 135, the sale shall be made without reserve in the manner provided in sections 140 and 141. *Save as provided in section* 137 *and in section* 138, *such sale shall not* be stayed or postponed on any account unless the amount of the demand *has been paid or* lodged *before sunset of the day next preceding the day of sale as aforesaid.*

Sale not to be stayed unless arrear claimed be lodged.

Explanation.—The balance claimed by the proprietor may be paid to such proprietor or to his agent having authority to receive it, or may, subject to the rules for the receipt of money in Government treasuries, be lodged in the Treasury of the Collector having jurisdiction under the provisions of section 146.

New.

(*b.*) It shall, however, be competent to any party desirous of contesting the right of the *proprietor* to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue such *proprietor* for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages.

But suit will lie for its reversal.

(*c*) The purchaser shall be made a party to any such suit, and, upon making a decree for reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the *proprietor* or person at whose instance the sale may have been made.

Purchaser to be made party to such suit.

Illustrations.

In the following cases a sufficient plea is established :—

(*a*)—A, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the allegation that no notice was stuck up in a conspicuous part of the Collector's kachahri, as required by clause (b) of section 134, and this allegation is found to be true.

(*b*)—A, B and C, joint owners of a *patni* tenure, sue for the reversal of the sale of such *patni* tenure on the allegation that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land as required by clause (c) of section 134. This allegation is found to be strictly true, although it appears that a copy of the notice was served on A and B personally.

In the following case a sufficient plea is not established :—

(*c*)—A, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the ground that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land, as required by clause (*c*) of section 134. It is found that the copy or extract of the notice was published in the manner required by this clause; but that the peon did not bring back the receipt of the defaulter, or of his manager, or of three substantial persons residing in the neighbourhood

as required by clause (*d*) of the same section; nor did he, as required by the same rule, make a voluntary oath before the nearest Munsif, or at the nearest thana, that the copy or extract had been duly published.

Reg. VIII of 1819, s. 14, cl. 2. Article 140 of the Digest.

Defaulter may apply for summary investigation before sale.

137. (*a.*) In any case in which a tenure-holder contests the proprietor's demand of an arrear as specified in the notice advertised, such tenure-holder shall be competent to apply for a summary investigation at any time within the period of notice. The proprietor shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

But sale not to be stayed, unless amount of rent claimed be deposited.

(*b.*) Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn notwithstanding the suit; and if the proprietor or his agent in attendance insists on the demand, the sale shall be made on his responsibility, nor shall it be stayed or the summary suit be allowed to proceed, unless the amount claimed *or its equivalent in Government securities* be *then* lodged *or has been previously lodged*, by the tenure-holder contesting the demand; and if such deposit be not made, the alleged defaulter shall have no remedy but by a regular action for damages, and for a reversal of the sale.

Omission to ask for investigation not to preclude action.

(*c.*) The omission to apply for a summary investigation under this section shall not preclude the tenure-holder from bringing such regular action.

Reg. VIII of 1819, s. 13, cls. 1 and 2. Article 35 of the Digest.

Under-tenure-holders enabled to protect themselves from avoidance of their under-tenures upon sale of the tenure;

138. In order to give under-tenure-holders of the first degree an opportunity of protecting themselves against damage by the avoidance of their under-tenures upon the sale of the tenure, the following rules have been enacted:—

by paying in the amount for which the tenure is about to be sold;

(1) Any one or more of such under-tenure-holders may, when the tenure is advertised for sale, pay into the Collectorate treasury or to the officer conducting the sale the amount for the realization of which the tenure is about to be sold, and, on such payment being made, the sale shall be stayed.

or by lodging money antecedently to meet arrears.

(2) Any one or more of such under-tenure-holders may lodge money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for the sale of the tenure; and, should the amount lodged be sufficient, the sale shall not proceed, but after making good to the proprietor the amount of his demand, any excess shall be paid back to the person who lodged it.

Article 36 of the Digest.

Procedure if amount lodged be rent due from under-tenant.

139. (*a.*) In any case in which an under-tenure-holder has paid money under section 138 in order to protect his under-tenure, if the amount so lodged be *wholly or partly* rent due by such under-tenure-holder to the holder of the tenure about to be sold, the same shall be stated at the time of making the deposit, and the amount, *or so much thereof as may be necessary*, shall be carried to the account of the tenant lodging it, *in satisfaction of* any claim of rent that may at the time be pending, or be thereafter brought

Reg. VIII of 1819, s. 13, cls. 3 and 4: Act VIII (B.C.) of 1869, s. 62: Act VIII (B.C.) of 1865, s. 6; 4 B. L. R. F. B. 77.

forward against him by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

Procedure if amount lodged be an advance from private funds.

(*b.*) If the person making such a deposit in order to stay the sale of the tenure shall have already paid the whole *or part* of the rent due from himself, so that the amount lodged is *wholly or partly* an advance from private funds and not a disbursement on account of the said rent, such deposit *or the balance which remains after satisfying any claims to rent under clause* (*a*) shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the holder of the tenure preserved from sale by such means, and the tenure so preserved shall be the security to the person making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been made upon mortgage; and he shall be entitled, on applying for the same, to obtain immediate possession of such tenure in order to recover the amount so advanced from any profits belonging thereto.

Defaulting tenure-holder must pay total sum advanced with interest, if he wants to recover his tenure.

(*c.*) If the defaulting tenure-holder shall desire to recover his tenure from the hands of the person who, by making the advance, has acquired such an interest therein and entered on possession in consequence, he shall not be entitled to do so, except upon re-payment of the entire sum advanced with interest at the rate of twelve per centum per annum up to the date of possession having been given as above, or upon exhibting proof in a regular suit to be instituted for the purpose that the full amount so advanced with interest has been realised from the usufruct of the tenure.

Reg. VIII of 1819, s. 10. Article 141 of the Digest.

Lots to be sold in order. Proprietor's agent to be present with account and receipt for notice.

140. (*a.*) At the time of the sale the notice previously stuck up in the kachahri shall be taken down, and the lots shall be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt or certificate mentioned in clause (*d*) of section 134. No lot shall be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate proceeding to be held upon each lot sold.

Kistbandi to be produced at second mid-year sale.

(*b.*) If the sale be of the description provided for in section 135, the kistbandi of the defaulter shall likewise be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale, nor shall the sale take place unless this be ascertained.

Proprietor exclusively responsible for correctness of papers, &c.

(*c.*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the Collector or other officer making the sale be answerable in any respect, except for its fairness and publicity, and for the obser-

vance of the rules prescribed for his guidance in this Chapter.

Act VIII (B.C.) of 1865, s. 3. Article 142 of the Digest.

Sale to be held by Collector in public kachahri: procedure to be observed at sale.

141. (*a.*) The sale shall be conducted in public by the Collector of the land revenue within whose Collectorate the lands comprised in the tenure are situate. The tenure shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter. Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

Reg. VIII of 1819, s. 9.

Re-sale if 15 per cent. not deposited, &c.: or if remainder of purchase-money not paid. Deposit forfeited in latter case.

(*b.*) If the fifteen per cent. be not paid, or an equivalent amount in Government securities be not lodged within two hours of the sale, the lot shall be re-sold on the same day; and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is on the ninth from the first sale, by proclaiming the same by the beat of drum through the bazar of the sadr station of the district, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per centum already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one. Such deficiency shall be levied by the process for the execution of decrees of the Civil Courts.

Act XXV of 1850, s. 2.

Forfeited deposit how applied.

(*c.*) The forfeited deposit of fifteen per centum shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Reg. VIII of 1819, s. 11. Article 143 of the Digest.

Tenure declared to be sold free of incumbrances created by act of defaulter.

142. (*a.*) Every tenure that may be disposed of at a public sale under the rules contained in sections 138 to 141, inclusive, for arrears of rent due on account of the same, is hereby declared to be sold free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives or assignees unless the right of making such incumbrances was expressly vested in the holder by a stipulation to that effect in the written engagements under which the said tenure was held.

No transfer, mortgage, &c., valid against proprietor unless he have consented thereto.

(*b.*) No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the proprietor to hold the tenure of his creation answerable, in the state which he created it, for the rent, which is, in fact, his reserved property in the tenure, except such transfer or assignment has been made with a condition to that effect under express authority obtained from such proprietor.

All leases granted by defaulter are cancelled by sale.

(*c.*) In like manner, upon the sale of a *tenure* for arrears, all leases originating with the former *tenure-holder*, if creative of a middle interest between the resident cultivators

and *such tenure-holder*, must be considered to be cancelled, except the authority to grant them have been specially transferred. The possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the ryots, this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent:

Exception in favour of *bond fide* engagements with ryots.

Provided that nothing contained in this section shall be construed to entitle the purchaser of a tenure to eject a khúdkasht ryot or resident and hereditary cultivator, or to cancel *bond fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent that a higher rate would have been demandable at the time such engagements were contracted by his predecessor. *Subject to these provisions any such purchaser shall be entitled to proceed under the provisions of his Act to enhance the rent of the ryots holding land in the tenure purchased by him, but no ryot shall be liable to ejectment otherwise than as provided in this Act.*

Certificate to be given to purchaser on payment of full amount of purchase-money.

143. *(a.)* The purchaser, as soon as he has paid the full amount of the purchase-money, shall receive from the officer conducting the sale a certificate of such payment.

Reg. VIII of 1819, s. 15, cl. 1. Article 141 of the Digest.

(b.) Such purchaser may then proceed with such certificate to procure a transfer of the tenure to his name in the kachahri of the proprietor, and upon furnishing security, if required, to the extent of half the annual rent, he shall receive the usual order for possession, together with a notice to the ryots and others to attend and pay their rents henceforward to him.

Zemindar bound to put him in possession.

(c.) The proprietor shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachahri; and should he in any manner delay the transfer in his office or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector,[a] and he shall receive an order for possession and shall be put in possession of the land by an officer deputed by the Collector for that purpose in the same manner as possession is obtained under a decree of Court: provided, however, that if the delay be on account of the proprietor contesting the sufficiency of the security tendered, the rule contained in clause *(c)* of section 53 shall be observed.

Purchaser's remedy, if zemindar refuse or delay to put him in possession.

[a] Act VIII (B.C.) of 1865, s. 3.

Procedure in case of opposition to purchaser by defaulter or persons claiming under him.

144. *(a.)* When the new purchaser proceeds to take possession of the lands of his purchase, if the late incumbent himself or the holders of under-tenures or assignments derived from such late incumbent, and intermediate between him and the actual cultivators, attempts to offer opposition or to interfere with the collections of such new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector[a] for the aid of the public officers in obtaining possession of his just rights.

Reg. VIII of 1819, s. 15, cls. 2 and 3. Article 145 of the Digest.

[a] Act VIII (B.C.) of 1865, s. 3.

Act VIII (B.C.) of 1865, s. 3.

(*b.*) A proclamation shall then issue under the seal and signature of the Collector,[b] declaring that the new incumbent having by purchase at a sale for arrears of rent due to the proprietor acquired the entire rights and privileges attaching to the tenure of the late tenure-holder in the state in which it was originally derived by him from the proprietor, he alone will be recognized as entitled to *collect the rents from the ryots and others*, and no payments made to any other individual will on any account be credited to such ryots or other tenants in any suit for rent or on any other occasion whatever when the same may be pleaded.

Collector to issue proclamation.

(*c.*) If the late incumbent or his late tenants continue to oppose the entry of the new purchaser notwithstanding the issuing of such a proclamation, or if there is reason to apprehend a breach of the peace on the part of any one, the aid of the police officers shall be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

Procedure in case of continued opposition by defaulter or his under-tenants.

Reg. VIII of 1819, s. 17, cl. 1.

145. The following rules shall be observed in disposing of the proceeds of the sale, that is to say—

Rules for disposal of the sale-proceeds.

Reg. VIII of 1819, s. 17, cl. 2.

(1) One per centum shall first be deducted from the net proceeds realized and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions contained in sections 133 to 144, inclusive.

One per cent. to be credited to Government.

Reg. VIII of 1819, s. 17, cl. 3.

(2) The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the tenure to sale) to the proprietor or other person to whom the same may be due: provided, however, that no former balances beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the proprietor have omitted to recover them by summary sale at the time, shall be regarded as personal debts of the individual tenure-holder, and can be recovered only in the same manner as other debts by a regular suit in Court.

Zemindar's claim for rent to be next satisfied; proviso.

Reg. VIII of 1819, s. 17, cls. 4, 5 and 6.

(3) Any excess that may remain after satisfying the demand of the proprietor shall be sent by the officer conducting the sale to the Government treasury to be held in deposit to answer the claims of the under-tenure-holders of the first degree, or of others who by assignment of the defaulter may be at the time in possession of a valuable interest in the land composing the tenure sold, or any part of it.

Balance to be sent to Government treasury to meet claims of persons endamaged by sale.

See Article 35 of the Digest.

(4) It shall be competent to any one conceiving himself to possess such an interest as is mentioned in clause 3 to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit.

Under-tenure-holders free to sue for price of their interest or compensation.

(5) If the Court on investigation considers the plaintiff's claim to be an equitable one, the Court shall award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

Award of Court if plaintiff's claim found equitable.

(6) No under-tenure-holder of the first degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such under-tenure or assignment upon its becoming cancelled by sale of the tenure, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose *before* the sale.

Suit not to lie if under-tenure-holder be himself in arrear at time of sale.

(7) If no claims upon the balance of the sale-proceeds are brought forward by any under-tenants or assignees within the period of two months from the date of sale, or if the amount claimed by those who may have sued do not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court of there being no claims to afford ground of detention for the whole or any part of the deposit, and, upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Reg. VIII of 1819, s. 17, cl. .

Defaulter entitled to sale-proceeds, if no claims, or after-claims have been satisfied.

(8) It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting Government securities bearing interest in lieu of the money so held in deposit. Such securities shall be taken at the rate of discount or premium of the day as shown by the *Government Gazette* last received.

Reg. VIII of 1819, s. 17, cl. 8.

Substitution of Government securities for cash in deposit.

146. The exercise of jurisdiction by the revenue authorities under sections 133 to 145, inclusive, shall be regulated by the following rules:—

Article 147 of the Digest.

Rules for the exercise of jurisdiction in summary sales by the revenue authorities.

(1) If the lands included in the tenure be all situate in one Collectorate, the Collector of such Collectorate shall conduct the sale and otherwise exercise jurisdiction.

Act VI of 1853, s. 1.

(2) If the lands included in the tenure be situate in two or more Collectorates, the Collector in whose Collectorate the greater portion of such

Act VI of 1853, s. 1.

lands is situate, shall conduct the sale and otherwise exercise jurisdiction.

Act VI of 1853, s. 2

(3) In any case in which a Collector entertains any doubt as to whether the lands or the greater part of them are situate within his Collectorate, he shall report the case for the order of *the Commissioner or* the Board of Revenue. *When the lands are situate in two or more districts included in the division of the same Commissioner, such Commissioner, and when the lands are situate in two or more districts not included in the division of the same Commissioner, the Board of Revenue, may order the Collector* to proceed in the matter; and such order shall be conclusive upon the question of jurisdiction.

(4) *Subject to such rules as may be made in that behalf by the Board of Revenue, a Deputy Collector may be authorized by a Collector to conduct sales or otherwise exercise jurisdiction under this Chapter.*

CHAPTER XVII.—OF CERTAIN SPECIAL RULES OF PROCEDURE APPLICABLE TO SUITS BETWEEN LANDLORDS AND THEIR TENANTS OR AGENTS.

Article 173 of the Digest.

147. Save as in this Act is otherwise provided *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and all proceedings in such suits before and after decree shall be governed by the provisions of the said Code. A special register of such suits shall be kept by every Civil Court in the manner prescribed by section 58 of the said Code.

Code of Civil Procedure to apply to suits between landlords and their tenants or agents.

Special register of such suits to be kept in every Court.

Article 174 of the Digest.

148. The cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court, which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties.

Suits between landlords and their tenants or agents where to be instituted.

See Article 168 of the Digest.

149. All suits arising out of the relation of landlord and tenant, which may be brought by or against landlords, and all such suits against agents as are mentioned in section 160 may be brought (*a*) by and against managers appointed under "The Court of Wards' Act, 1879;" and (*b*) by or against surbarakars or tehsildars of estates held under the immediate management of the revenue authorities, whether such estates are the property of private persons or of the Secretary of State for India in Council. *All such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or in the names of private persons to whom such estates belong.*

Surbarakars and tehsildars of khas estates may sue and be sued in their own names.

See Article 169 of the Digest.

150. (*a*.) Every naib or gomashtah thereto specially empowered by a written authority under the hand of his employer shall, for the purposes of all such suits as are mentioned in section 149, be deemed to be the recognized agent of such employer within the meaning of sections 36, 37 and 38 of *The Code of Civil Procedure*, notwithstanding that such employer may be within the local limits of the jurisdiction of the Court in

Naibs or gomashtahs, thereto specially empowered, to be authorized agents in cases arising out of the relation of landlord and tenants.

which any appearance, application, or act is made or done by such naib or gomashtah. Any such suit shall, nevertheless, be instituted and conducted in the name and on behalf of such employer.

Notice may be served upon, or money or fee tendered to naib or gomashtah instead of landlord.

(b) Every notice which may under any of the provisions of this Act be served upon, and every sum of money or fee which may under any of the provisions of this Act be tendered to, a landlord, may be served upon, or tendered to, any naib or gomashtah of such landlord empowered in the manner and for the purpose mentioned in clause (a); and such service or tender shall be as effectual as service upon, or tender to, such landlord himself.

Suit by landlord or tenant to determine conditions of tenancy.

151. Every landlord shall be entitled to maintain a suit against any ryot, the rent of whose holding is payable to such landlord, and, *subject to the provisions of section 32*, every ryot shall be entitled to maintain a suit against his landlord for the determination of all or any of the following matters, that is to say,—

(a) the quantity of land held by such ryot:

(b) the amount of annual rent payable for such land:

(c) the class to which such ryot belongs, that is to say, whether he is a ryot entitled to hold at fixed rates, or is a ryot having a right of occupancy, or has held and cultivated his land for three or more years within the meaning of sections 32, 33 and 34.

The plaint in any such suit shall state the allegation of the plaintiff as to each of such matters respectively. No such suit shall be dismissed merely because the plaintiff fails to prove exactly the allegations made in his plaint.

Article 93 of the Digest. Act VIII (B.C.) of 1869 s. 52. Act X of 1859, s. 78.

Claim for ejectment or cancelment of lease how to be put forward.

152. A landlord desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment, and for recovery of the arrears in the same suit, or he may sue for such ejectment or cancelment, producing an unexecuted decree for arrears of rent as evidence of the existence of such arrears. In all such suits the decree shall specify the amount of the arrears, and if such amount, together with interest and the costs of the suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed. *If the Court is closed on the fifteenth day, such amount may be paid in on the day upon which the Court re-opens.*

Stay of ejectment on satisfaction of decree within 15 days.

Explanation 1.—The judgment-debtor is entitled to the benefit of this fifteen days' rule, even though the lease contains a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent therein contained.

12 B. L. R. 439 (P C). B L. R. F. B. 972.

Explanation 2.—If the original decree is altered or amended on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review. If on appeal or review the original decree be not altered or amended, the fifteen days shall be computed from the date of such original decree.

Marsh, 471.

23 W. R. 50.

Suit for abatement of rent to be instituted by ryot before what tribunal.

153. A suit for abatement of the rent payable by a ryot who has as a tenant held, or has as a tenant occupied and cultivated, land for more than three years, may be instituted,

(1) when abatement is claimed on the first or second ground specified in section 25 in the Civil Court or before the Collector;

(2) when abatement is claimed on the third ground specified in section 25 before the Collector only:

provided that no such suit shall be instituted before the Collector unless ten ryots at least join in bringing the same. Ten or more ryots may join in bringing any such suit, if the rent of all the land in respect of which the suit is brought is payable to the same landlord, although the holdings of such ryots are separate.

Suit for abatement by tenure-holder or under-tenure-holder or mokarraridar to be instituted in the Civil Court.

(*b.*) A suit for abatement of the rent payable by a tenure-holder or under-tenure-holder, or by a ryot holding at fixed rates and entitled under section 18 to abatement of rent on account of diluvion, shall be instituted in the Civil Court.

Procedure in such suits.

(*c.*) The provisions of section 98 shall be applicable to every suit for abatement instituted in the Civil Court; and the provisions of Chapter XV, so far as they are relevant, shall be applicable, to every suit for abatement instituted before the Collector.

See Article 172 of the Digest,

Process of execution may be issued against person or property, but not against both.

154. Subject to the provisions of section 64, process of execution in any such suit as is mentioned in section 149 may be issued against either the person or property of the judgment-debtor, but such process shall not be issued simultaneously against both his person and property. Process of execution against the property may be issued against either the movable or immovable property, or against both.[b]

This alters the present law—see Articles 151, 157 and 172 of the Digest, and 1 B. L. R. A. C. 217.

Article 177 of the Digest: Act VIII (B.C.) of 1869, s. 53.

Court to issue immediate execution in certain cases of ejectment, &c.

155. When in a suit brought by a landlord to eject a ryot liable to ejectment under the provisions of this Act, or to eject a farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or an agent after the determination of his agency or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court passes a decree in favour of the plaintiff, no application for execution in the form provided in section 235 of *The Code of Civil Procedure* shall be necessary, but such Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree: provided, however, that in cases to which section 152 is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree.

Article 178 of the Digest, Act VIII (B.C.) of 1869, s. 54.

In such cases, execution not to be stayed, pending appeal.

156. It shall not be lawful for the Court to entertain an application for stay of execution of the order mentioned in section 155 pending an appeal, and no person who shall have been evicted under any such order, shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

Article 179 of the digest. This reproduces Act VIII (B.C.) of 1879, s. 102, which has been held by a Full Bench of the Calcutta High Court not to be *ultra vires* of the Bengal Legislative Council (I. L. R. 3 Calc., 151).

No appeal from any decree of a District Judge or any Additional Judge for money below Rs. 100, unless right to enhance rent or title to land be determined by judgment.

157. Nothing contained in this Act shall be deemed to alter the law as established by Act X of 1859 passed by the Governor General in Council, so as to confer a right of appeal in any suit tried and decided under the provisions of *The*

Code of Civil Procedure or of Chapter XVIII of this Act by a District Judge or additional Judge originally or in appeal, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, and if no question of right to enhance or vary the rent of a ryot or tenant, or no question relating to title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment in such suit.

13 B. L. R., 376.

15 B. L. R. 1.

Illustration.

A sues B for the rent of certain land. B pleads that the rent of the land is payable to C, and not to A. C is not made a party to the suit, which is decreed against B. No question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto is determined by the judgment in this suit.

21 W. R., 36, 23 W. R. 227.

158. No application for a review of a judgment or order passed in any such suit as is mentioned in section 149 shall be received by a Civil Court other than the High Court of Judicature at Fort William in Bengal, after the expiration of thirty days from the date of such order or judgment.

Article 180 of the Digest.

Review of judgment not admissible after 30 days.

159. Any notice or summons, which it is necessary to issue under this Act and for the service of which no special provision is made, shall be served under the provisions contained in section 174 for service of summons on a defendant.

Notice or summons not specially provided for to be served under the provisions of *The Code of Civil Procedure* for service of summons on defendant.

Suits against Agents.

160. When an agent employed by a landlord in the collection or receipt of rents or the management of land neglects or refuses to deliver to such landlord any money, accounts or papers which have come into or have been in his own hands in the course of such employment, or neglects or refuses to render a proper account of his receipts and disbursements, such landlord may sue such agent in the Civil Court.

Note the effect of the words in brackets. The provisions of the existing law do not apply to *amlah* who do not collect the rents from the tenants, but who receive them from those who collect.

Suits for money or accounts or papers against agents employed in collection or receipt of rents or management of land.

When such landlord is able to ascertain the exact sum of money or the specific accounts or papers in the hands of such agent he shall state such sum or describe such accounts or papers in his plaint.

As, for example, when an account has been rendered and a balance struck.—See 20 W. R. 309.

Landlord may sue for exact sum of specific accounts of papers when known.

161. When such landlord is unable to ascertain the exact sum of money or the papers, vouchers or other documents in the hands of the agent in consequence of such agent having neglected or refused to render proper accounts, such landlord shall set forth this fact in his plaint and may pray that the Court take an account from such agent and make a decree for the payment of such sum of money, if any, which upon taking such account may be found to be due to such landlord, and for the delivery of such papers, vouchers or other documents as may be found to be in the hands of such agent.

It is the duty of every agent to keep and render proper accounts—*See* Story on Agency, pp. 235-236.

When exact sumon specific papers not known in consequence of agent not having rendered proper accounts, landlord may ask that Court take an account.

162. The provisions of *The Code of Civil Procedure* shall be applicable to every plaint presented

See Story's Equity Jurisprudence, Vol. I, p. 465 and following pages; and 24 W. R. 70.

under section 160 or section 161; but, in the case of any such plaint as is described in section 161, the summons to the defendant issued under section 64 of the said Code shall call upon such defendant to show cause why he should not render a full and satisfactory account of all sums received and disbursed by him, and of all papers, vouchers or other documents which may have come into his hands in the discharge of his duties as agent.

Summons to defendant to require him to show cause why he should not render accounts.

See Section 121 of the Oudh Act XIX of 1868.

163. If such defendant fails to show cause or does not, in the opinion of the Court, show sufficient cause why he should not render such full and satisfactory account, the Court shall make an order requiring such defendant to file such account in Court and shall fix a day on or before which such account shall be so filed. Such order may be enforced in the manner provided in section 260 of *The Code of Civil Procedure*.

If defendant fail to show cause or do not show sufficient cause, Court shall make an order that a proper account be filed, and shall fix a date by which it shall be filed. Such order how enforced.

164. When such defendant files such account the Court shall allow the plaintiff a reasonable time to examine it and file objections thereto, if he desires to make any such objections, and shall then fix a date upon which such Court shall proceed to hear such objections, if any, and to examine such account. If upon such hearing it appears that the plaintiff is not entitled to any sum of money, or to any papers, vouchers, or other documents in the hands of the defendant, such suit shall be dismissed. If it appears that the plaintiff is entitled to a sum of money or to any such papers, vouchers, or other documents, a decree shall be made for the payment or delivery thereof, and such sum of money, papers, vouchers or other documents shall be specified in such decree.

Plaintiff to be allowed time to examine account filed, and object. Day to be fixed for hearing objections. Decree to be made after hearing.

CHAPTER XVIII.—OF THE PROCEDURE IN SUITS FOR THE RECOVERY OF ARREARS OF RENT, &C., AND CERTAIN OTHER SUITS.

165. When the relation of landlord and tenant is admitted or proved to subsist between the parties, the procedure contained in this Chapter shall apply to the following suits, that is to say—

Procedure contained in this Chapter to be followed in certain suits, when relation of landlord and tenant is admitted or proved.

(1) to suits for the recovery of the rent of land situated outside the local limits of the ordinary original jurisdiction of the the High Court of Judicature at Fort William in Bengal:

(2) to suits for ejectment from any such land:

(3) to suits brought to recover possession of any such land:

(4) to suit for damages on account of illegal exaction of rent or cesses, or on account of the refusal of receipts:

(5) to suits brought under section 52 to compel the registration of successions to, or transfers of, tenures, under-tenures or occupancy holdings.

District Judge may direct any such suit to be tried under the ordinary provisions of *The Code of Civil Procedure.*

Provided that it shall be competent to the District Judge, upon the application of any party thereto, to direct that any such suit shall be tried according to the provisions of *The Code of Civil Procedure*, and upon such order being made the whole of such provisions shall be applicable to the trial of such suit.

The Plaint, &c.

Plaint to be presented to Civil Court of lowest grade competent to try suit.

166. The suit shall be instituted by presenting a plaint. Such plaint shall be presented to the Civil Court of the lowest grade competent to try such suit.

Place of suing how determined when there are different local limits of jurisdiction.

If the land mentioned in section 148 is situate within the limits of different districts or within the limits of a single district, but within the jurisdiction of different courts, the provisions of section 19 of *The Code of Civil Procedure* shall be applicable.

While such suit is pending, no subsequent suit to be entertained for same subject-matter between same parties.

While a suit so instituted is pending, no court shall receive or try another suit instituted for the same relief between the same parties, or parties under whom they or any of them claim, and in which the matter in issue is directly and substantially in issue in the suit so previously instituted.

Particulars to be contained in plaint.

167. The plaint must contain the following particulars:—

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description, and place of residence of the plaintiff;

(*c*) the name, description, and place of residence of the defendant;

(*d*) a simple concise statement of the claim;

(*e*) the date when the cause of action arose;

(*f*) a demand of the relief prayed for; and

(*g*) in suits concerned with tenures, undertenures, holdings, or land, the extent, situation, designation, and boundaries of the same; or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification.

See Article 185 of the Digest.

The provisions of section 40 of *The Code of Civil Procedure* as to the language of the plaint shall be applicable.

Plaint to be signed and verified.

168. (*a.*) The plaint shall be signed by the plaintiff, and in any case in which he has employed a pleader by such pleader. It shall also be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, provided that if the plaintiff by reason of absence or for other good cause is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

Article 187 of the Digest. Section 51 as amended) of the Code of Civil Procedure.

The provisions of section 52 of *The Code of Civil Procedure* as to the contents and signature of the verification shall be applicable.

Rejection, amendment return, and admission of plaints.

(*b.*) The provisions of sections 53, 54, 55, 56 and 57 of *The Code of Civil Procedure* as to rejecting, amending, and returning plaints shall, so far as they are relevant, apply to

plaints presented under section 166. When any such plaint is admitted, the Court shall cause the particulars mentioned in section 167 to be entered in the register prescribed by section 147. Such entries shall be numbered in a separate series for each year according to the order in which plaints are admitted.

Parties, &c.

Substituting, dismissing, and adding of parties.

169. The provisions of section 27 of *The Code of Civil Procedure* as to substituting or adding a plaintiff for or to a plaintiff suing, and the provisions of section 32 of the same Code as to dismissing or adding parties, shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that the Court shall not add as a party to any suit tried under the procedure contained in this Chapter a person setting up a title adverse to the plaintiff or defendant in respect of the subject-matter of the suit: but any question of title disputed between any such person and a party to the suit may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit.

Person claiming adversely to the landlord or tenant, who are parties to the suit, not to be added as a party.

Illustration.

A, a proprietor, sues B, a ryot, for the rent of a holding, and files in court a kabuliyat alleged to have been executed for such holding by B in his favour. B denies the execution of the kabuliyat, and pleads that his holding forms part, not of A's estate, but of the estate of X, a neighbouring proprietor. X appears, makes a similar allegation, and desires to be made a party to the suit. The Court shall not make X a party to the suit, but shall confine itself to the question of the genuineness of the kabuliyat.

Provisions of *Code of Civil Procedure* as to joinder of causes of action, transfer of suits, and employment of recognized agents and pleaders made applicable to suits under this Chapter.

170. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say,

Section 45 as to the joinder of causes of action;

Section 25, as to the transfer of suits; and

Section 36, clauses (*a*) and (*b*) of section 37, sections 38, 39, 40 and 41 as to the employment of recognized agents and pleaders.

Documentary Evidence, &c.

Certain provisions of *The Code of Civil Procedure* as to the production, &c., of documentary evidence made applicable to suits under this Chapter.

171. The following provisions of *The Code of Civil Procedure* as to the production, admission, rejection and return of documentary evidence shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say—

Section 59, as to the production of any document upon which plaintiff sues, and the delivery of such document or a copy thereof, and as to a list of the documents relied on by plaintiff as evidence:

Section 60, as to stating in whose possession or power a document is:

Section 62, as to production of shop-books and marking or returning entries therein:

Section 63, as to inadmissibility of documents not produced when plaint is filed:

Section 137, as to Court sending for papers from its own records or from other Courts: provided that any such affidavit as is mentioned in the said section 137 may be made by a *mukhtar*, or by any person acquainted with the facts:

Section 138, as to documentary evidence being in readiness at the first hearing:

Section 139, as to the effect of the non-production of documents:

Section 140, as to the Court receiving documents and rejecting irrelevant or inadmissible documents:

Section 141, as to placing documents on the record, as to marking and filing proved documents, and as to entries in books:

Section 142, as to marking and returning rejected documents:

Section 143, as to the Court ordering documents to be impounded; and

Section 144, as to the return of documents admitted in evidence.

Proceedings preliminary to hearing.

Issue of summons to defendant. Appearance how to be made.

172. When the plaint has been registered under section 108 a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified— Article 191 of the Digest. C. C. P., section 64.

(*a*) in person, or

(*b*) by a pleader, duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader, accompained by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court: provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Personal appearance of parties.

The provisions of sections 66 and 67 of *The Code of Civil Procedure* as to the personal appearance of a plaintiff or defendant, and of section 69 of the same Code as to fixing the day for the appearance of the defendant, shall apply to all cases instituted and tried under this Chapter.

Summons to be for final disposal of case, and to direct defendant to produce documents and witnesses.

173. The summons shall be for the final disposal of the suit. It shall direct the defendant to produce any document the production of which is required by the plaintiff, or upon which such defendant may desire to rely in support of his defence. It shall further instruct the defendant to bring his witnesses on the day specified, if they are willing to attend without summons, or, if they are not so willing, to have sommons served upon them in sufficient time to enable them to be present on such day. Article 192 of the Digest. C. C. P., Sections 68, 70, and 71.

Provisions for service of summons on defendant.

174. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say— Articles 193, 194, 195 and 169 of the Digest.

Section 72, as to delivery of summons for service on defendant:

Section 73, as to mode of service:

Section 74, as to service on several defendants, except the proviso:
Section 77, as to service on agent in charge of immovable property:
Section 78, as to service on adult male member of defendant's family:
Section 79, as to person served signing an acknowledgment:
Section 80, as to procedure when defendant or other person refuses to sign the acknowledgment or cannot be found:
Section 81, as to endorsement of time and manner of service:
Section 82, as to examination of serving officer and substituted service:
Section 83, as to the effect of substituted service:
Section 84, as to fixing time for appearance when service is substituted:
Section 85, as to service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service:
Section 86, as to service within the Presidency Town:
Section 87, as to service on defendant in jail:
Section 88, as to procedure, if jail be in a different district:
Section 91, as to substitution of a letter for a summons:
Section 92, as to the mode of sending such letter:
Section 93, as to process being served at the expense of the party issuing it:
Section 94, as to notices and orders in writing being served as summonses: and
Section 95, as to postage:

Provided that if, in any suit for arrears of the rent of a transferable tenure, under-tenure or holding service of summons on the defendant cannot be effected in accordance with the above provisions, the Court may direct that a copy of such summons be posted up in some conspicuous place upon the land included in such tenure, under-tenure or holding, and that this shall be deemed a good and sufficient service.

See Article 197 of the Digest and sections 477, 478, C. C. P.

Arrest of the defendant before judgment allowed in certain cases, but not in case of tenure, under-tenure or occupancy holding hypothecated for its own rent.

175. If in any such suit as is mentioned in clause (1) of section 165 the plaintiff presents with his plaint an application for the arrest of the defendant before judgment, on the ground that, if a summons be issued in the first instance, such defendant will abscond instead of appearing to answer the claim, the Court shall examine the plaintiff or some one on his behalf acquainted with the facts and shall inspect the documents, if any produced by the plaintiff, and if it is satisfied—

(*a*) that the defendant is resident within the district in which such court is held;
(*b*) that there are *primâ facie* grounds for believing the claim to be well-founded; and
(*c*) that if a summons be issued in the first instance, the defendant will abscond instead of appearing to answer the claim;

Article 176 of the Digest.

the Court may issue a warrant for bringing the defendant before it to show cause why he should not give security for payment of the amount claimed by the plaintiff: provided that no such warrant shall be issued in a suit for arrears of

rent of any such tenure, under-tenure or occupancy holding as is mentioned in section 64.

Time for return of warrant. Notice to be served on defendant when arrested.

176. When any such warrant is issued the Court shall fix a reasonable time for the return thereof, and the officer entrusted with the service shall at the time of arresting the defendant deliver to him a notice containing the particulars of the claim, and requiring the defendant, if he contest the same, to bring with him any document upon which he may intend to rely in support of his defence. Article 198 of the Digest.

Procedure when defendant is arrested and brought before the Court under warrant.

177. In any case in which a defendant is arrested under any such warrant, he shall be brought with all convenient speed before the Court, and the Court may, if it thinks fit, and if the defendant fails to show cause to the contrary, require him to give security for payment of the amount claimed by the plaintiff, and in default of such security being given, may commit such defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Court may order: *provided that the defendant may at this stage apply to be declared an insolvent, in which event the provisions of Chapter XX of the Code of Civil Procedure shall be applicable.* Article Digest.

The provisions of section 480 of *The Code of Civil Procedure* as to an application by a surety to be discharged shall be applicable to any case in which security is given by the defendant: and the provisions of section 482 of the same Code as to subsistence allowance shall be applicable to any case in which the defendant is committed to the civil jail.

Procedure if warrant of arrest cannot be served upon the defendant.

178. If the defendant cannot be arrested under the warrant, the Court may on the application of the plaintiff either postpone the case for such period as it may think proper to enable such plaintiff to apply for another warrant, or may forthwith issue a proclamation to be affixed in the Court-house and at the residence of the defendant, fixing a day for the hearing of the case which shall not be less than ten days from the date of the publication of such proclamation at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in section 177. Article 200 of the Digest.

Compensation for arrest obtained without reasonable cause.

179. If it shall appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may in its decree award to such defendant such sum as it may deem a reasonable compensation for any injury or loss caused by reason of such arrest or of his detention in jail during the pendency of the suit.

Provisions of *The Code of Civil Procedure* as to attachment before judgment to apply to suits for arrears of rent.

180. The provisions of section 483 to 491 (inclusive) of *The Code of Civil Procedure*, relating to attachment before judgment and compensation for improper attachments, shall be applicable to all such suits as are mentioned in clause (1) of section 165: provided that, in a suit for the recovery of arrears of rent due on account of a tenure, under-tenure or occupancy holding to which the provisions of section 64 are applicable, no such attachment before judgment shall be directed unless the plaintiff can satisfy the Court that such arrears, together with interest Article 202 of the Digest.

and costs of the suit, are not likely to be satisfied by the sale proceeds of such tenure, under-tenure, or occupancy holding.

See Article 111 of the Digest.

181. Standing crops and other ungathered products, which have been attached under section 180 may, notwithstanding such attachment, be reaped and gathered by the defendant, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the defendant neglects to do so, the plaintiff may cause such crops or products to be so reaped or gathered and may store them in such granaries or places as aforesaid, or in some other convenient place in the neighbourhood.

Standing crops, &c., attached may be reaped, gathered, and stored by defendant, or if defendant neglect by plaintiff.

See C. C. P., s. 498.

The Court may, on the application of any party to the suit, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any such crops or products which cannot be stored and kept without deterioration or loss.

Ad interim sale of crops or products which cannot be kept without deterioration.

Article 214 of the Digest.

182. The following provisions of *The Code of Civil Procedure* relating to the summoning and attendance of witnesses shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say—

Provisions as to the summoning and attendance of witnesses.

Section 159, as to summons to attend to give evidence or produce documents:

Section 160, as to expenses of witnesses being paid into Court on applying for summons, and as to the scale of such expenses:

Section 161, as to tender of expenses to witnesses:

Section 162, as to procedure where insufficient sum is paid in, and where witness is detained more than one day:

Section 163, as to time, place and purpose of attendance being specified in the summons:

Section 164, as to summons to produce document:

Section 165, as to power to require persons present in Court to give evidence:

Section 166, as to the manner of serving summons:

Section 167, as to the time for serving summons:

Section 168, as to attachment of property of absconding witness:

Section 169, as to withdrawral of attachm if witness appear:

Section 170, as to procedure, if witness fails to appear:

Section 171, as to Court of its own accord summoning strangers to suit as witnesses;

Section 172, as to persons summoned to give evidence being bound to attend:

Section 173, as to when such persons may depart:

Section 174, as to consequence of non-attendance, and of refusal to give evidence or produce documents:

Section 175, as to procedure when witness absconds:

Section 176, as to when persons are not bound to attend in person to give evidence:

Section 177, as to consequence of refusal of party to give evidence when called on by the Court; and

Section 178, as to rules relating to witnesses being applicable to parties summoned.

Appearance of Parties.

Provisions as to the appearance of the parties and consequence of non-appearance.

183. The following provisions of *The Code of Civil Procedure*, relating to the appearance of the parties and the consequences of non-appearance, shall be applicable to all suits instituted and tried under this Chapter, that is to say—

Section 96, as to appearance of parties on day fixed in summons for defendant to appear and answer:

Section 97, as to dismissal of suit where summons not served in consequence of plaintiff's failure to pay the fee for issuing it:

Section 98, as to dismissal of suit if neither party appear: Article 203 of the Digest.

Section 99, as to its being in such case competent to plaintiff to bring a fresh suit, or to Court to restore the suit to the file:

Section 100, as to the procedure, if plaintiff only appears: Article 205 of the Digest.

Section 101, as to the procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance: Article 206 of the Digest.

Section 102, as to the procedure where defendant only appears: Article 204 of the Digest.

Section 103, as to decree by default against plaintiff being a bar to a fresh suit:

Section 105, as to the procedure in case of non-attendance of one or more of several plaintiffs:

Section 106, as to the procedure in case of non-attendance of one or more of several defendants:

Section 107, as to the consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person:

Section 108, as to setting aside a decree *ex parte* against a defendant: and

Section 109, as to no decree being set aside without notice to opposite party.

Defendant may file written statement of defence. No other written statement, unless called for by the Court.

184. The defendant may, if he desires to do so, file a written statement of his defence. No other written statement shall be filed by either of the parties or received by the Court: provided that the Court may at any time call for a written statement and fix a time for presenting the same. *See* Article 208 of the Digest.

Provisions as to payment of money into Court and interest on money so paid in, and as to set off.

185. The following provisions of *The Code of Civil Procedure* as to payment of money into Court shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say,— *See* Articles 170, 171 and 219 of the Digest.

Section 376, as to deposit by defendant of amount in satisfaction of claim:

Section 377, as to notice of deposit to plaintiff:

Section 378, as to interest on sum deposited not being allowed to plaintiff after receipt of notice:

Section 379, as to procedure where plaintiff accepts deposit as satisfaction in part or in full: and

Section 111, as to set-off of ascertained sum legally recoverable.

Court may direct a local investigation.

186. The Court may of its own motion or upon the application of either party to the suit direct a local investigation in any case in which it deems fit. The provisions of sections 392, 393, 397, 398, 399 and 400 of *The Code of Civil Procedure* shall be applicable to every such investigation.

C. C. P., s. 155.

Judgment at once, if either party fails without sufficient reason to produce his evidence.

187. If either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment.

Adjournment.

Article 212 of the Digest.

Hearing of suit may be adjourned in what cases.

188. The hearing of the suit may be adjourned to future day to be named in the order of adjournment in the following cases, that is to say,—

(1) when either party is not present in person, and his pleader or the person mentioned in clause (*c*) of section 172 is unable to answer a material question relating to the case, which the Court is of opinion that the party ought to answer and is likely to be able to answer if present in person:

(2) when the Court, after proceeding as provided in section 191, is of opinion that the parties are at issue upon some question upon which it is necessary to hear further evidence:

Article 215 of the Digest.

(3) when either party for sufficient reason, which shall be recorded by the Court, requires time for the production of evidence or for any other purpose.

Costs of adjournment.

In case (1) the Court shall direct the party to appear on the day to which the hearing is adjourned. In case (2) the Court shall frame an issue for trial at the adjourned hearing. In all cases the Court shall make such order as it sees fit with respect to the costs of the adjournment:

C. C. P., s. 56.

Hearing to be continuous.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Article 217 of the Digest.

Course to be pursued, if parties fail to appear or produce their evidence at the adjourned hearing.

189. The provisions of section 157 of *The Code of Civil Procedure* as to the course to be pursued if the parties fail to appear on the day to which the hearing is adjourned, and of section 158 of the same Code as to the Court proceeding to decide the suit notwithstanding that either party fails to produce his evidence shall be applicable to all suits instituted and tried under the provisions of this Chapter.

The Hearing.

Articles 208 and 209 of the Digest. Sections 117, 118 and 128 of C. C. P.

When both parties present Court to ascertain and record whether each admits or denies the allegations of fact and documents of the opposite party.

190. When both parties appear, in the manner directed in the summons or subsequently by the Court, upon the day appointed for the hearing or adjourned hearing, the Court shall—

(1) ascertain from the defendant or his pleader

(*a*) whether he admits or denies, the

allegations of fact made in the plaint; (*b*) when he has not filed a written statement or the statement filed by him is insufficient, what allegations of fact he makes in reply to the plaint:

(2) ascertain from the plaintiff or his pleader, whether he admits or denies the allegations of fact made by the defendant:

(3) ascertain from each party or his pleader whether he admits or denies the genuineness of any document produced by the opposite party.

The Court shall record such admissions and denials.

C. C. P., sections 118, 119. Digest, Articles 208 and 209

Oral examination of party or person able to answer material question.

191. The Court may then examine orally any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit, by whom such party or his pleader is accompanied; and may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be reduce to writing and form part of the record.

The substance of such examination shall be reduced to writing by the Judge and shall form part of the record.

C. C. P., section 181.

Witnesses to be examined in open Court in presence and hearing of Judge.

192. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

New, but see C. C. P., section 189

Evidence of witnesses in what manner to be recorded.

It shall not be necessary to take down such evidence in writing at full length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of what he deposes, sufficient to give the gist and substance of his evidence. Such memorandum shall be written by the Judge with his own hand and in his own language, or, if English is not his own language and he is able to make such memorandum in English, then in the English language. It shall further be signed by him and shall form part of the record.

C. C. P., section 190.

Judge, rendered unable to make memorandum, to cause it to be made from his dictation.

If the Judge be rendered unable to make a memorandum as above required, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court. Every memorandum so made shall form part of the record.

Some provisions of *The Code of Civil Procedure* as to mode of recording evidence made applicable.

193. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits tried under the provisions of this Chapter, that is to say—

Section 186, as to any particular question and answer being taken down:

Section 188, as to remarks upon the demeanour of witnesses:

Section 191, as to power to deal with evidence taken down by Judge removed before conclusion of suit; and

Section 193, as to power of Court to re-call and examine a witness.

See Digest, Article 211. C. C. P., s. 198.

Judgment when to be pronounced. Provisions of *Code of Civil Procedure* applicable thereto.

194. After proceeding in accordance with the provisions of sections 190, 191, 192 and 193, after considering the documents admitted or proved on behalf of each party, and after hearing any arguments which may be addressed to it by the parties or their pleaders, the Court shall pronounce judgment in open Court usually at once, but, if this is not possible, then on some future day of which due notice shall be given to the parties or their pleaders. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the Chapter, that is to say—

Section 199, as to power to pronounce judgment written by Judge's predecessor:

Section 200, as to the language of the judgment:

Section 201, as to translation of the judgment:

Section 202, as to dating, signing, and correcting the judgment:

Section 203, as to contents of judgments of Courts other than Courts of Small Causes:

Section 219, as to judgment directing by whom costs are to be paid:

Section 220, as to power of Court in the matter of costs:

Section 221, as to costs being set off against any sum admitted or found to be due: and

Section 222, so much only as relates to interest on costs.

Provisions as to the decree, its contents, &c.

195. (*a.*) The following provisions of *The Code of Civil Procedure* shall be applicable to the decree, that is to say—

Section 205, as to the date of the decree, and the Judge signing it:

Section 206, as to the contents of the decree, and power to amend it:

Section 210, as to payment by instalments: and

Section 216, as to a set-off.

Interest on amount of decree.

(*b.*) A decree for money may direct that the amount decreed shall carry interest *not exceeding* six per centum per annum until such amount is realised.

Decrees in certain suits describe the land.

(*c.*) A decree in any of the suits mentioned in clause 1, 2, 3 or 5 of section 165 shall contain the particulars mentioned in clause (*g*) of section 167.

Decree to show separately arrears decreed in respect of each tenure, under-tenure, or occupancy holding liable to sale for its own arrears.

(*d.*) A decree for arrears of the rent of a tenure, under-tenure, or occupancy holding, and also for arrears of the rent of any other tenure, under-tenure, or occupancy or other holding, shall show separately the arrears decreed in respect of each tenure, under-tenure, or occupancy holding to which the provisions of section 64 are applicable.

C. C. P., s. 217.

Parties entitled to certified copies of judgment and decree.

196. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

Execution of Decrees.

General Provisions.

197. Application for execution shall be made by the decree-holder or his pleader. Such application shall be in writing unless it is made at the time when judgment is pronounced, in which case it may be made verbally, subject, however, to the provisions of section 201.

See Article 223 of the Digest.

Application for execution by whom to be made—to be in writing unless made when judgment is pronounced, in which case it may be made verbally.

198. The following provisions of *The Code of Civil Procedure* shall be applicable, so far as they are relevant, to the execution of decrees in suits instituted and tried under the provisions of this Chapter, that is to say—

Provisions of *The Code of Civil Procedure* applicable to the execution of decrees in suits under this Chapter.

Section 223, as to the Court by which the decree may be executed:

Section 224, as to the procedure when the Court desires that its own decree shall be executed by another Court:

Section 225, as to such other Court filing without proof the copies of decree, &c., transmitted:

Section 226, as to execution of the decree by the Court to which it is sent:

Section 227, as to execution by High Court of decree transmitted by other Court:

Section 228, as to powers of Court to which decree is sent for execution, and as to appeal from orders passed in execution:

Section 239, as to Court to which decree is sent staying execution:

Section 240, as to requiring security from or imposing conditions on, judgment-debtor in such cases:

Section 241, as to liability of judgment-debtor or his property discharged under section 239 to be re-taken:

Section 242, as to order of Court which made decree or of Appellate Court being binding on Court to which decree sent:

Section 230, clause 2, as to the discretion of the Court to refuse execution at the same time against person and property:

See Article 173 of the Digest.

Section 231, as to application for execution by joint decree-holder:

Sections 232 and 233, as to application for execution by transferee of decree, but only when such transferee is also the transferee of the decree-holder's interest in the tenure, under-tenure, holding or land for arrears of the rent of which such decree, has been passed:

Section 234, as to application for execution against representatives of deceased judgment-debtor:

Section 243, as to stay of execution pending suit between decree-holder and judgment-debtor:

Section 244, as to questions to be decided by Court executing decree:

Section 246, as to cross decrees:

Section 247, as to cross claims under the same decree:

Section 248, as to notice in certain cases to show cause why decree should not be executed:

Article 225 of the Digest.

Section 249, as to procedure after issue of notice

Article 224 of the Digest

Section 250, as to when warrant is to issue

Section 251, as to date, signature, seal, delivery and time for return of warrant

Section 252, as to decree against representative of deceased for money to be paid out of deceased's property

Section 253, as to decree against surety

Section 254, as to execution of decrees for money, but subject to the provisions of section 64 of this Act

Section 257, as to modes of paying money under a decree

Section 257A, as to agreements to give time to judgment-debtor and for satisfaction of judgment-debt and

Section 258, as to payment to decree-holder.

Article 226 of the Digest Section 263 C C P

Mode of executing decree for ejectment of ryot or for restoring ryot to possession

199 If the decree be for the ejectment of a ryot from land, or for restoring a ryot to the possession of land, such decree shall be executed by delivering the possession of such land to the party to whom it has been adjudged by the decree, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate such land

Article 227 of the Digest section 264 C C. P

Mode of executing decree for ejecting, or restoring to possession a tenure holder, under tenure holder, or other person in possession of land occupied by tenant

200 If the decree be for the ejectment of a tenure-holder, under-tenure-holder, or other person from land in the occupancy of a tenant or other person entitled to occupy the same, or for restoring a tenure-holder, under-tenure-holder, or other person to the possession of land in the occupancy of a tenant or other person entitled to occupy the same, such decree shall be executed by affixing a copy of the execution-warrant in some conspicuous place on the land, and by proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree.

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Procedure for the sale of tenures, under-tenures, and holdings in execution of decrees for their own rent.

See section 64 of this Bill

Form of application for execution of a decree for arrears of rent of a tenure, under-tenure, or occupancy holding

201. When a decree has been made wholly or partly for arrears of rent due for a tenure, under-tenure, or occupancy holding, the first application for executing such decree in respect of such arrears shall, if in writing, contain, and, if made orally, be supplemented as soon as convenient by a written statement containing the following particulars, that is to say—

(*a*) the number of the suit,

(*b*) the names of the parties,

(*c*) the date of the decree,

(*d*) the amount of rent decreed,

(*e*) the amount of costs decreed,

(*f*) whether any appeal has been preferred from the decree,

(*g*) a sufficient description of such tenure, under-tenure, or occupancy holding, containing the area and boundaries, as far as known,

(*b*) the annual rent of such tenure, under-tenure, or occupancy holding.

Copy of entry in register prescribed by section 54, to be filed with application.

In any case in which such register as is prescribed by section 54 is kept, there shall with such application or written statement be filed a copy of so much of such register as relates to such tenure, under-tenure, or occupancy holding.

Article 151 of the Digest.

202. When such application or written statement has been presented in due form, the Court shall make an order for the sale of such tenure, under-tenure, or occupancy holding. If such application is not in due form, the Court may allow it to be amended or may reject it without prejudice to a fresh application in proper form.

If application in proper form, Court shall direct sale of tenure, under-tenure, or occupancy holding. If not in proper form, may be amended or rejected

Article 152 of the Digest.

203. (*a*.) When an order for the sale of such tenure, under-tenure, or occupancy holding has been made under section 202, notice of the sale so ordered shall be given in the following manner, that is to say—

Notice of sale of tenure, under-tenure, or occupancy holding how to be published.

(1) by posting up in the Court-house of the Court aforesaid a notification containing the particulars specified in section 201, and announcing that such tenure, under-tenure, or occupancy holding will be sold on a date to be stated therein:

(2) by posting up a similar notification in the kachahri of the Collector of the District:

(3) when the decree is not executed by the District Judge, by posting up a similar notification in the Court-house of the District Judge:

(4) by posting up a similar notification on some conspicuous place upon the land of such tenure, under-tenure, or occupancy holding:

(5) by posting up a similar notification upon some conspicuous place in the town or village nearest to which such tenure, under-tenure, or occupancy holding is situate.

(*b*.) Such notification shall further announce that such tenure, under-tenure, or occupancy holding shall first be put up to auction, subject to the registered incumbrances specified in section 206, and shall be sold subject to such incumbrances, if the sum bid is sufficient to liquidate the amount of the decree and costs: and that otherwise it may, if the decree-holder so desire, be sold free of all incumbrances *on a subsequent day of which due notice will be given*.

Notification to state that sale shall be subject to incumbrances if sum bid satisfy decree, otherwise that sale may be made free of incumbrances.

(*c*.) The date of the sale shall be so fixed that it shall be not less than twenty days from the date on which the notification is posted up as required by paragraph (1) of clause (*a*) and shall not fall on a holiday.

Date of the sale how to be fixed.

Or shall we say, before it is knocked down.

204. The amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, may be paid into Court at any time before such tenure, under-tenure, or occupancy holding is put up

Sale to be stayed only on payment into Court of amount of decree with costs; or by confession of satisfaction by decree-holder.

for sale and the bidding commences. The sale shall not be stayed unless such amount is so paid into Court, or unless the decree-holder makes an application in writing to this effect on the ground that the decree has been satisfied out of Court. In any such case no application for any further execution of the decree shall be received.

See Articles 153 and 154 of the Digest.

What persons may pay the amount of the decree and costs into Court so as to stay the sale.

205. The amount of the decree and costs mentioned in section 204, may be paid into Court by any of the following persons, that is to say—

(*a*) by the judgment-debtor:

(*b*) by any one who alleges that he and not the judgment-debtor is the duly registered owner of the tenure, under-tenure, or occupancy holding notified for sale, and produces a copy of such register as is prescribed by section 54 in support of such allegation:

(*c*) by any one who has an interest in, or lien upon, such tenure, under-tenure, or occupancy holding:

(*d*) in the case of a tenure, under-tenure, or occupancy holding being notified for sale, by any one having an interest which would be endamaged by the sale of such tenure, under-tenure or occupancy holding free of incumbrances.

Article 35 to the Digest

Person paying money into Court under clause (*c*) or (*d*) may sue defaulter for the same as money lent to him.

Any person who pays money into Court under clause (*c*) or (*d*) shall be entitled to sue for the amount so paid as money lent, and to recover the same from the person in consequence of whose default to pay rent *or in consequence of whose wrongful act* the tenure, under-tenure or occupancy holding was notified for sale.

L. R. 1, I. A. 189.

Sections 138 and 139 applicable in the case of certain tenures.

In the case of a tenure in respect of which the right of selling or bringing to sale has been specially reserved by stipulation in the engagements interchanged on the creation thereof, the provisions of sections 138 and 139 shall further be applicable.

Tenure, under-tenure, or holding to be first put up to sale subject to incumbrances, and sold, if bidding cover amount of decree and costs.

206. Upon the day appointed for the sale, such tenure, under-tenure, or occupancy holding shall first be put up to auction, subject to incumbrances, that is to say, so as that the purchaser shall not be entitled to avoid any incumbrance created by the judgment-debtor or his predecessor in title; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs including the costs of sale, such tenure, under-tenure, or occupancy holding shall be sold subject to such incumbrances.

Meaning of "incumbrances."

Explanation.—The term "incumbrances" in this section means and includes every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure, under-tenure, or occupancy holding was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, subject to this condition that a copy of such instrument has been served upon the person to whom the rent of such tenure, under-tenure, or holding is payable. Every

registering officer shall, when required, cause any such copy to be served on any such person in the manner provided in Part VII of *The Indian Registration Act, 1877*, for the service of summons In the case of incumbrances created before the commencement of this Act by instruments in writing duly registered under the law applicable thereto, such copy may be served at any time within six months after such commencement The purchaser at a sale under this section shall be entitled to proceed within one year *after he has knowledge of the same* to avoid and annul every incumbrance, lien, sub-lease, or subordinate interest other than those above defined and specified

If bidding does not cover amount of decree and costs, and decree holder desires a sale free of incumbrances, such sale may be ordered upon an adjourned date

207 (*a*) If the bidding does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that such tenure, under-tenure, or occupancy holding shall be sold free of incumbrances, the officer holding the sale shall at his request withdraw such tenure, under-tenure, or occupancy holding from the auction, and shall publicly intimate that it will, *unless the said amount be paid into Court*, be put up to auction and sold free of incumbrances upon some future sale-day not less than fifteen or more than thirty days afterwards A notification to the same effect shall be posted up with all convenient despatch on some conspicuous place upon the land of such tenure, under-tenure, or occupancy holding Upon such latter mentioned sale-day such tenure, under-tenure, or occupancy holding shall be put up to auction and sold free of incumbrances

If no bid decreeholder to be required to bid

(*b*) If no bid is made for such tenure, under-tenure, or occupancy holding when put up to auction under clause (*a*) the decree-holder shall be required to bid, and if he refuses to do so he shall not be entitled to proceed to execute the decree against the person or other property, movable or immovable, of the judgment-debtor

Rules applicable to sales under section 206 or section 207

208 The following rules shall be applicable to every sale made under section 206 or section 207 —

Article 242 of the Digest

(1) The sale shall be by auction upon the day *or adjourned day* appointed and notified as provided in section 203, *or clause* (*a*) *of section* 207, *or, if this be not convenient, upon the following open day* The decree-holder and all persons other than the defaulter may bid

Article 243 of the Digest.

(2) The tenure, under-tenure, or occupancy holding shall be knocked down to the highest bidder, and he shall be required to deposit immediately twenty-five per centum of the amount of his bid In default of such deposit, the tenure, under-tenure, or occupancy holding shall be put up again and sold forthwith upon the same day, or, if this be not convenient, upon the following open day, *and if the price realized is less than the amount bid by the person who failed to deposit twenty-five per centum of his bid, the difference may be recovered from such person under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent*

Article 244 of the Digest.

(3) The balance of the purchase money shall be paid up before sunset of the eighth day from that

on which the sale took place, such sale-day being reckoned as one of the eight, or, if the eighth day be a holiday, then on the first open day. If such balance be not so paid, the deposit shall be forfeited to Government; the tenure, undertenure, or occupancy holding shall be re-sold under clauses (1) and (2); the purchaser, who failed to make good the balance as aforesaid, shall forfeit all claim to such tenure, under-tenure, or occupancy holding, or to any part of the sum for which it may be subsequently sold; and if such sum be less than the price bid by such purchaser, the difference may be recovered from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

Articles 156 and 245 of the Digest.

Sale to be confirmed when price paid. Certificate to be given to the purchaser. Officer to be deputed to put him in possession.

Code of Civil Procedure, s. 316.

Article 245 of the Digest. Consider whether a certain time, say three months, should not be fixed for making this application.

209. (*a*.) When the whole of the purchase-money has been paid, the Court shall confirm the sale if there be no valid reason to the contrary; and shall grant a certificate stating the name of the person who at the time of sale is declared to be the purchaser, and the date of such sale. Such purchaser shall, if required, produce and show such certificate when applying for registration udner the provisions of section 40. If the purchaser makes application to such effect, and if he deposits the necessary costs, the Court shall depute an officer to put him in possession of the tenure, under-tenure, or occupancy holding, and to notify the fact of the purchase to the ryots and other persons whom it may concern.

Benami purchaser not recognized.

(*b*.) The provisions of section 317 of *The Code of Civil Procedure* shall apply to every certified purchaser under clause (*a*).

Article 155 of the Digest.

Purchaser under clause (*a*) of section 207 to acquire tenure, under-tenure or occupancy holding free of all incumbrances not made under written authority of landlord.

210. The person who purchases a tenure, under-tenure, or occupancy holding under the provisions of clause (*a*) of section 207 shall be entitled to proceed within one year to avoid and annul all incumbrances imposed thereupon by any holder thereof, his representatives or assignees, unless in the case of incumbrances allowed by law, the right of making the same was expressly granted by the written engagement under which the holder was originally let into possession, or by the subsequent written authority of the person so letting into possession, his representatives or assignees:

Proviso. Khoodkasht ryots or resident and hereditary cultivators may not be ejected.

Provided that no such purchaser may eject *khoodkasht* ryots or resident and hereditary cultivators or cancel *bonâ fide* engagements made with such ryots or cultivators, except it be proved in a regular suit brought by such purchaser for the adjustment of the rent that a higher rent would have been fairly demandable at the time when such engagements were contracted:

Incumbrances may not be avoided, if judgment-debtor or person colluding with him purchase.

Provided also that no such incumbrances may be avoided in any case in which the purchaser is the judgment-debtor or a person acting in fraudulent collusion with him for the purpose of disencumbering the tenure, under-tenure, or occupancy holding.

Subject to these provisions, any such purchaser shall be entitled to proceed under the provisions of this Act to enhance the rent of the ryots holding land in the tenure, under-tenure, or occupancy holding purchased by him; but no ryot shall be liable to ejectment otherwise than as provided in this Act.

Purchaser may enhance rents according to law; but may not eject save as provided in this Act.

211. The following rules shall be observed in disposing of the proceeds of the sale, that is to say,—

Article 246 of the Digest.

Rules for disposal of the sale proceeds.

(1) There shall first be paid to the decree-holder the costs incurred by him in bringing the tenure, under-tenure, or occupancy holding to sale.

Costs of sales to be paid first.

There shall in the next place be paid to the decree-holder the amount due to him under the decree, in execution of which the sale was made.

Amount due under the decree to be next satisfied.

(3) If there remains a balance after these sums have been liquidated, there shall be paid to the decree-holder therefrom any rent which may have become due to him for such tenure, under-tenure, or occupancy holding after the date upon which the latest arrear recovered by the decree became due: provided that the decree-holder shall not under this rule recover any rent which he might have included in the suit in which he obtained such decree: and provided also that in no case shall he obtain rent for more than six months after the date of the final decree. If the judgment-debtor dispute the decree-holder's right to receive such rent, the Court shall determine such dispute, and such determination shall have the force of a decree.

New.

If balance remains, rent which fell due after the arrears recovered by the decree may be paid therefrom.

(4) If there remains a balance after the liquidation of the rent mentioned in clause 3, such balance shall be paid to the judgment-debtor upon his application.

Article 246 of the Digest.

Balance, if any, after liquidating such rent, to be paid to the judgment-debtor.

212. (*a.*) The judgment-deutor may apply to the Court to set aside the sale on the ground that there was a material irregularity in publishing or conducting it, and that he has sustained substantial injury by reason of such irregularity: and the Court may set aside such sale, if material irregularity and such substantial injury are proved, and not otherwise.

Articles 247 and 248 of the Digest, and see Code of Civil Procedure s. 311.

Sale may be set aside only if material irregularity and substantial injury are proved.

Consider question of appeal.

(*b.*) In any case in which a sale is ordered to be set aside the order shall direct that the purchase money be refunded to the purchaser with or without interest, as the Court in its discretion may see fit; and such order may be enforced by the Court as a decree for money against any person into whose hands such purchase money or any portion thereof may have passed, if such person have been served with notice of the application made under clause (*a*).

Article 249 of the Digest. Code of Civil Procedure, s. 315.

Order setting aside sale to direct refund of the purchase-money, and may be enforced as a money decree.

(c.) [If such purchaser has received possession of the tenure, under-tenure or occupancy holding, the Court may take an account of any rent paid by him to

When judgment-debtor obtained possession, Court may take an account

the landlord of such tenure, under-tenure or occupancy holding, and also of any rents or profits received by him, and may make an order directing the payment of any balance found thereupon to be due to the person entitled to receive the same. Such order shall have the force of a decree: provided that the taking of such account shall not be permitted to delay the restoration of the judgment-debtor to possession.]

Articles 157 and 172 of the Digest; section 354, C. C. P.

213. In the following cases, that is to say,

Cases in which decree may be enforced by attachment and sale of movable and immovable property and by arrest and imprisonment of judgment-debtor.

(1.) When a tenure, under-tenure or occupancy holding has been sold in execution of a decree for arrears of rent due in respect thereof, and the amount of such decree has not been satisfied by the proceeds of such sale:

(2) when a decree has been made for arrears of rent due in respect of land not forming a tenure, under-tenure, or occupancy holding:

(3) when a decree has been made for damages on account of the legal exaction of rent or cesses, or on account of the refusal of receipts:

(4) when a decree has been made for costs; the decree may be enforced by any or all of the following methods, that is to say, (a) by the attachment and sale of the movable property of the judgment-debtor; (b) by the attachment and sale of the immovable property of the judgment-debtor; (c) by the arrest and imprisonment of the judgment-debtor.

Attachment and sale of movable and immovable property.

Provisions of *The Code of Civil Procedure* as to attachment and sale of movable and immovable property applicable to the execution of decrees in suits instituted and decided under this Chapter.

214. The following sections of *The Code of Civil Procedure* shall be applicable to the execution of decrees in suits instituted and decided under the provisions of this Chapter, that is to say—

Section 236, as to application for attachment of immovable property being accompanied with inventory:

Section 237, as to particulars when application is for attachment of immovable property:

Section 238, as to when application must be accompanied by extract from Collector's register:

So much of section 245 as provides that, in case of a decree for money, the value of the property attached shall as nearly as may be correspond with the amount of the decree:

Section 266, as to property liable to attachment and sale in execution of a decree:

Section 267, as to power of Court to summon and examine persons as to property liable to be seized:

Section 268, as to attachment of debt, share and other property not in possession of judgment-debtor:

Section 269, as to attachment of movable property in possession of the defendant, and rules for maintenance of attached live stock:

Section 270, as to attachment of negotiable instruments:

Section 271, as to seizure of property in houses and zenanas:

Section 272, as to attachment of property deposited in Court or with Government officer:
Section 273, as to attachment of decree for money, and of other decrees, and as to decree-holders giving information:
Section 274, as to attachment of immovable property:
Section 275, as to withdrawal of attachment after satisfaction of decree:
Section 276, as to private alienation of property after attachment being void:
Section 277, as to Court directing coin or currency notes attached to be paid to party entitled:
Section 278, as to investigation of claims to, and objections to attachment of, attached property and postponement of sale: See Articles 237, 238 and 239 of the *Digest*.
Section 279, as to evidence to be adduced by claimant:
Section 280, as to release of property from attachment:
Section 281, as to disallowance of claim to release of property attached:
Section 282, as to continuance of attachment subject to claim of incumbrancer:
Section 283, as to saving of suits to establish right to attached property:
Section 284, as to power of Court to order property attached to be sold, and proceeds to be paid to person entitled: See Article 240 of the Digest.
Section 285, as to property attached in execution of decrees of several Courts:
Section 286, as to sales by whom conducted and how made:
Section 287, as to proclamation of sales by public auction:
Section 288, as to indemnity of Judges:
Section 289, as to mode of making proclamation:
Section 290, as to time of sale:
Section 291, as to power to adjourn sale, and stop sale on tender of debt and costs, or on proof of payment:
Section 2f92, as to officers concerned in execution sales not bidding for, or buying property sold:
Section 293, as to defaulting purchaser being answerable for loss by re-sale:
Section 294, as to decree-holder not bidding for, or buying, property without permission, and as to amount of decree being taken as payment when he purchases:
Section 295, as to proceeds of execution-sale being divided rateably amongst decree-holders, with proviso where property is sold subject to mortgage:
Section 296, as to rules concerning negotiable securities and shares in public companies:
Section 297, as to payment for movable property sold:
Section 298, as to sale of movable property not being vitiated by irregularity, but person injured being competent to sue:
Section 299, as to delivery of movable property actually seized to purchaser:
Section 300, as to delivery of movable property to which judgment-debtor is entitled subject to lien:
Section 301, as to delivery of debts and of shares in public companies:
Section 302, as to transfer of negotiable instruments and shares:

Section 303, as to vesting order in case of other immovable property :
Section 304, as to sales of immovable property :
Section 306, as to deposit by purchaser of immovable property :
Section 307, as to time for payment in full :
Section 308, as to procedure in default of payment,
Section 309, as to notification on re-sale of immovable property :
Section 310, as to co-sharer of a share of undivided immovable property having preference in bidding :
Section 311, as to sale of immovable property not being set aside unless there be (1) material irregularity, and (2) substantial injury :
Section 312, as to effect of objection being allowed or disallowed :
Section 313, as to power to apply to set aside the sale :
Section 314, as to confirmation of sale :
Section 315, as to return of price to purchaser if sale be set aside :
Section 316, as to certificate to purchaser of immovable property :
Section 317, as to benami purchaser not being recognized :
Section 318, as to delivery of immovable property in the occupancy of judgment-debtor :
Section 319, as to delivery of immovable property in the occupancy of a tenant :
Section 326, as to Court having power to authorize Collector to provide for satisfaction of decree otherwise than by sale of immovable property :
Section 327, as to Local Government making rules for sales of land in execution of decrees for money :
Section 328, as to procedure in case of obstruction to execution of decree :
Section 329, as to procedure in case of obstruction by judgment-debtor or at his instigation :
Section 330, as to procedure when obstruction continues :
Section 331, as to procedure in case of obstruction in good faith by claimant other than judgment-debtor :
Section 332, as to procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession :
Section 333, as to orders passed under sections 331 and 332 having the force of decrees and being subject to appeal :
Section 334, as to resisting or obstructing purchasers in obtaining possession of immovable property : and
Section 335, as to obstruction by a claimant other than defendant.

Of Arrest and Imprisonment.

Order for committing to, or detaining in, jail a judgment-debtor arrested before judgment, who fails to satisfy the decree.

215. If the judgment-debtor, having given security for his appearance under the provisions of section 177, is present before the Court, or if he has been committed to jail under the provisions of the same section, the Court may, upon the application of the decree-holder and upon his depositing subsistence-money in accordance with the provisions of section 339 of *The Civil Code of Procedure*, make an order, subject to the provisions of section 216, that such judgment-debtor, unless he

at once pays the amount of the decree, be committed to, or detained in, jail. If no such application is made and the judgment-debtor is in jail he shall be released upon the expiry of three clear days after judgment being pronounced.

Execution may be had against surety, who fails to deliver judgment-debtor into custody.

216. If the judgment-debtor, having given security for his appearance, is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against such surety.

Certain sections of *The Code of Civil Procedure* as to arrest and imprisonment applicable to the execution of decrees under this Chapter.

217. The provisions of the following sections of *The Code of Civil Procedure* shall be applicable to the execution of decrees in suits instituted and decided under the provisions of this Chapter, that is to say,—

Section 336, as to place of judgment-debtor's imprisonment, arrest in houses, and release upon payment:

Section 337, as to warrant of arrest directing judgment-debtor to be brought up:

Section 338, as to scales of subsistence allowances:

Section 339, as to deposit of judgment-debtor's subsistence-money:

Section 340, as to subsistence-money being added to the amount of the decree:

Section 341, as to the release of the judgment-debtor:

Section 342, as to the term of imprisonment: and

Section 343, as to endorsements on warrants.

Miscellaneous provisions of The Code of Civil Procedure applicable to suits under this Chapter.

Certain Chapters and sections of *The Code of Civil Procedure* applicable generally to suits under this Chapter.

218. The following chapters and sections of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say,—

Chapter XX, as to insolvent judgment-debtors:

Chapter XXI, as to the death, marriage, and insolvency of parties:

Chapter XXII, as to the withdrawal and adjustment of suits:

Chapter XXV, as to commissions, except section 396:

Chapter XXVII, as to suits by or against Government or public officers:

Chapter XXIX, as to suits by and against corporations and companies:

Chapter XXX, as to suits by and against trustees, executors and administrators:

Chapter XXXI, as to suits by and against minors and persons of unsound mind:

Chapter XXXII, as to suits by and against military men: and

Chapter XLIX, miscellaneous, sections 640, 641, 642, 643, 645, 648, 651 and 652.

Of appeals.

Appeals from original and appellate decrees to be governed by the provisions of *The Code of Civil Procedure.*

219. Subject to the provisions of section 157 of this Act, the provisions of Chapter XLI of *The Code of Civil Procedure* as to appeals from original decrees, and the provisions of Chapter XLII of the same Code as to appeals from appellate decrees, shall be applicable to all suits instituted and decided under the provisions of this Chapter.

Jurisdiction of the Bengal Council to enact this section may be derived from clause 2 of section 4 of *The Code of Civil Procedure* as amended by Act XII of 1879; and read clause 4 of section 6 of Act XI of 1865 with sections 15 and 52 of the same Act.

No appeal in suits for arrears of rent in which the amount claimed does not exceed ten rupees.

220. Notwithstanding anything contained in section 219, no appeal shall lie in any suit brought for arrears of rent, in which the amount claimed does not exceed ten rupees, and in which no question of right to enhance or vary the rent of a tenant has been determined, when such suit has been tried and decided by a munsif or other judicial officer specially empowered by the Lieutenant-Governor of Bengal to exercise final jurisdiction under this section. The District Judge may call for the record of any case so decided, and, if he is satisfied that a failure of justice has been caused by a substantial error, defect or irregularity in the proceedings or in the decision, he may pass such orders as shall to him appear proper. Such orders shall be final.

District Judge to have power of revision.

Appeals from orders governed by the provisions of *The Code of Civil Procedure.* Proviso.

221. The provisions of Chapter XLIII of *The Code of Civil Procedure* as to appeals from orders shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that no appeal shall lie against the order of a District or Additional Judge in any such suit as is mentioned in section 220.

Review of judgment.

Review of judgment to be regulated by the provisions of *The Code of Civil Procedure.*

222. Subject to the provisions of section 158 of this Act, the provisions of Chapter XLVII of *The Code of Civil Procedure* as to review of judgment shall be applicable to all suits instituted and tried under the provisions of this Chapter.

Res Judicata. proviso.

223. The provisions of section 13 of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that the decision in any such suit of a question concerning the title to, or any interest in, immovable property shall not be a bar to the trial of the same question in any suit tried under *The Code of Civil Procedure* and not under the provisions of this Chapter.

Articles 182 and 252 of the Digest.

Discretion to issue process free of charge.

224. If in any case a civil Court is satisfied that a party is unable to pay the cost of any necessary process in any suit instituted or pending under this Chapter, it may direct such process to be served free of charge.

See Act IV of 1876.

Revenue agent may in Munsif's Court do any act which may be done by a pleader.

225. Anything which may be done by a pleader under the provisions of this Chapter or under any of the provisions of *The Code of Civil Procedure* mentioned herein, may be done in any case instituted in the Court of a Munsif by any such revenue agent as is mentioned in the proviso to section 10 of Act XVIII of 1879.

THE FIRST SCHEDULE.

(See Section 2.)

Number and year.	Subject of Act.	Extent of repeal.
	Regulations of the Bengal Code.	
VIII of 1793 ...	A Regulation for re-enacting, with modification and amendments, the rules for the decennial settlement of the public revenue payable from the lands of zemindars, independent talukdars, and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces, respectively, on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805 ...	A Regulation for the settlement and collection of the public revenue in the zillah of Cuttack, including the pergunnahs of Puttespore, Kummardichour and Bagrae, at present included in the zillah of Midnapore.	Section 7.
V of 1812 ...	A Regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812 ...	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and sections 2 and 3.
VIII of 1819 ...	A Regulation to declare the validity of certain tenures and to define the relative rights of zemindars and patni talukdars, also to establish a process for the sale of such taluks in satisfaction of the zemindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.
I of 1820 ...	A Regulation for providing that all sales of certain taluks, made answerable by sale for arrears of the zemindar's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed as a subordinate tenure" to the end of the clause.
	Acts of the Bengal Council.	
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal).	The whole Act.

Number and year.	Subject of Act.	Extent of repeal.
VIII of 1865 ...	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of rent due in respect thereof.	The whole Act.
IV of 1867 ...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869 ...	An Act to amend the procedure in suits between landlords and tenants.	The whole Act.
	Acts of the Governor General in Council.	
XXV of 1850 ...	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850 ...	An Act for amending the forms necessary for the sale of patni tenures in Bengal.	The whole Act.
VI of 1853 ...	An Act relating to summary suits for arrears of rent, to sales of patni taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859 ...	An Act to amend the law relating to the recovery of rent in the presidency of Fort William in Bengal.	The whole Act.
XI of 1859 ...	An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.	In section 55 the words "except distraint".

THE SECOND SCHEDULE.

(*See Section 59.*)

FORM A.

I, A. B., &c., do solemnly declare that I [*or C. D., when the tenant A. B. is not personally cognisant,*] am in possession of [*describe the tenure, under-tenure, holding or land, giving the area and boundaries when possible*] the annual rent of which is [*state amount*], and that such rent was payable to E. F. up to [*date of last payment made*], and that on the [*date on which rent fell due*] there became due in respect of such [*tenure, under-tenure, holding or land*], the sum of , and that no other or further rent is due in respect of such [*tenure, under-tenure, holding or land*], and I further solemnly declare that

[*in case (a) of section* 58].

I did on the [*date*] at [*give the name of the mal kachahri or other place where the rent is payable*] in the presence of [*give the names of two persons at least who where present at the tender*] tender the said sum of to [*give the name of the person to whom tender was made, who should be the landlord or his agent having authority to receive or who usually receives the rent*], and that the said would not accept the said sum and give me a receipt for the same. *Or*

[*in case (b) of section* 58]

That the said E. F. died on the [*date*], and that G. H., I. J. and K. L. are his heirs and are coparceners, and they have not appointed a common manager, nor has any such common manager been appointed by the District Judge, and that they were not ready to give me, nor could I obtain from them their joint receipt for the said sum of *Or*

[*in case (c) of section* 58]

That the said E. F. died on the [*date*] and his estate is claimed by his widow G. H., and also by one I. J., who alleges himself to be the adopted son of the said E. F., but G. H. denies the validity of the said adoption, and that the said G. H. and the said I. J. have each warned me [*or* C. D.] not to pay rent to the other claimant, and I [*or* C. D.] am [or is] in reasonable doubt as to which of the said two claimants is entitled to the rent.

THE THIRD SCHEDULE.

(*See Section 92.*)

PART I.—*Suits.*

Description of Suit	Period of Limitation.	Time from which period begins to run.
1. To set aside an award under clause (*b*) of section 84.	One month ...	The date of the award.
2. Under clause (1) of section 145 by an under-tenure-holder for price of interest avoided by sale, or for compensation.	Two months ...	The date of the sale.
3. When a deposit of rent has been made under the provisions of section 58 for the recovery of arrears of rent which fell due before the date of such deposit.	Six months ...	The date of service of notice of the deposit under section 58.
4. Under clause (8) of section 79 to enforce a forfeiture for disclaimer.	Six months ...	The date of the disclaimer.
5. For damages on account of the illegal exaction of rent.	One year ...	The date of the illegal exaction.
6. For damages on account of the extortion of rent by confinement or other duress.	One year ...	The date of the extortion.
7. For damages on account of the excessive demand of rent.	One year ...	The date of the excessive demand.
8. For damages on account of the illegal exaction of any unauthorized cess or impost.	One year ...	The date of the illegal exaction.
9. For damages on account of the refusal of receipts for rent.	One year ...	The date of the refusal.
10. For abatement of rent of tenure-holder, under-tenure-holder or ryot holding at fixed rates under clause (*b*) of section 153.	One year ...	The date of the commencement of the cause which entitles to abatement.
11. For abatement of the rent of a ryot having a right of occupancy on the ground of the area of his holding having been diminished by diluvion.	One year ...	The date of the diminution, or, where it is gradual, the completion thereof. A suit may be instituted at any time while such gradual diminution is going on.
12. For abatement of the rent of a ryot having a right of occupancy on the ground that quantity of land has been proved by measurement to be less than quantity for which rent previously payable.	One year ...	The date of the measurement.
13. For abatement of the rent of a ryot having a right of occupancy on the ground that the value of the produce has been decreased by any cause beyond his power.	One year ...	The date of the operation of such cause, *or* the date of the fall in price.
14. For abatement of the rent of a ryot having a right of occupancy on the ground that the productive powers of the land have been decreased by any cause beyond his power.	One year ...	When the operation of such cause becomes known.

PART I.—*Suits*,—continued.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
15. To eject any tenure-holder, under-tenure-holder or ryot on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
16. By the purchaser of an estate, tenure or under-tenure, sold for arrears of revenue or rent, to avoid a tenure, under-tenure, or other tenancy or subordinate interest, in any case in which he is entitled to avoid the same.	One year ...	The date after confirmation of the sale upon which such purchaser first has knowledge of the existence of such tenure, under-tenure or other tenancy or subordinate interest.
17. *By ryot against his landlord to recover the possession of a holding from which such ryot has been illegally ejected by such landlord, in any case not governed by section 9 of The Specific Relief Act, 1877.*	*One year ...*	*The date of dispossession.*
18. *By a transferee or successor against a landlord under section 52 to compel him to admit to registry a succession to, or transfer of a tenure, under-tenure or occupancy holding.*	*One year ....*	*The date of the express or implied refusal.*
19. For the recovery of arrears of rent when no deposit of rent has been made under the provisions of section 58.	Three years ...	The last day of the Bengal year, or the last day of the month of Jeyt of the Umli or Fusli or Willaiti year in which the arrear claimed became due.
20. *By a tenure-holder or under-tenure-holder against his landlord to recover the possession of a tenure or under-tenure from which such tenure-holder or under-tenure-holder has been illegally ejected by such landlord, in any case not governed by section 9 of The Specific Relief Act, 1877.*	*Three years ...*	*The date of dispossession.*
21. For determination of the conditions of tenancy under section 151.	At any time during the tenancy.	The commencement of the tenancy.
22. For the recovery of money or papers in the hands of an agent, or to compel an agent to account under section 160 or 161.	At any time during the agency or within one year after the determination thereof.	The receipt of the money or papers by the agent.
23. Like suit where person having right to sue has, by means of fraud, been kept from knowledge of the receipt of any such money by the agent, or where fraudulent account has been rendered by agent.	One year ...	The time when the fraud first became known to the person having the right to sue, provided that in no case shall there be allowed more than three years from the termination of the agency.
24. For apportionment of rent under section 63.	At any time during the tenancy.	

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run
25. From any decree or order under this Act to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
26. From any order of a Collector under this Act to the Commissioner.	Thirty days ...	The date of the order appealed against.

See 7 W. R. Civ. Rul. 186. 21 W. R. 53, 121, 251; and 23 W. R. 460.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
27. Under clause (*a*) of section 212 to have a sale set aside.	Thirty days ...	The date of the confirmation of the sale.
28. Under clause (*c*), section 53, for an order directing a proprietor to receive security tendered by transferree or devisee of a patni tenure.	Three months ...	The date of the express or implied rejection of such security.
29. By a purchaser under clause (*a*) of section 209 to be put in possession of a tenure, under-tenure, or occupancy holding purchased by him.	Three months ...	The date of the confirmation of the sale.
30. For the execution of a decree or order made under this Act, *or any Act repealed by this Act, and* not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree. When the judgment-debtor has by fraud or force prevented the execution of the decree within the three years, the Court may allow a further period not exceeding one year.	Three years ...	(1.) The date of the decree or order; or (2.) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3.) where there has been a review of judgment, the date of the decision passed on the review.
31. For the execution of a decree for a sum of money exceeding Rs. 500 calculated as in Article 30.	The time provided by The Indian Limitation Act, 1877	As provided in The Indian Limitation Act, 1877.